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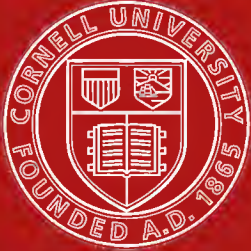


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ALIEN ENEMIES

AND

PROPERTY RIGHTS

Under the Trading With Enemy Act

HEARING BEFORE COMMITTEES
DEBATES IN HOUSE OF REPRESENTATIVES
DEBATES IN UNITED STATES SENATE
CHANGES IN ORIGINAL ACT
POWERS OF CUSTODIAN
INTERNES AND THEIR PROPERTIES
DISCUSSION OF VERSAILLES TREATY IN SENATE AS
AFFECTING SEIZED PROPERTY
SENATOR FRELINGHUYSEN ON "M. P." AND DR. ALBERT
CALDER RESOLUTION TO INVESTIGATE CUSTODIAN'S
OFFICE
MR. PALMER'S CONSTRUCTION OF THE ACT—EXTRACTS
FROM HIS REPORTS
TESTIMONY OF MR. PALMER BEFORE COMMITTEES OF
CONGRESS
HEARINGS BEFORE FOREIGN RELATIONS COMMITTEE,
U. S. SENATE
EX-ATTY. GENL. LEWIS ON COMMON LAW TRUSTEE
HAROLD REMINGTON, ESQ., ON CONFISCATION
VALIDATING CLAUSES OF VERSAILLES TREATY
SENATOR HITCHCOCK'S RECORD ON NEUTRALITY
RETURN OF AMERICAN PROPERTY IN GERMANY

Edited and Compiled By CHARLES R. ALLISON
Of the New York Bar

No Investigation

No investigation as such has ever been conducted by any legislative committee as to Mr. Palmer's conduct of the Alien Property Custodian's office. Nor has that office ever had any counterbalance or check similar to other Government departments.

Much popular misapprehension exists as to various reports tending to the belief that Mr. Palmer's conduct as Alien Property Custodian has been investigated at various times. The best answer to that misconception is found in the report of the Sub-Committee of the United States Senate which heard Mr. Palmer personally in his own behalf in the month of July, 1919.

The Committee Report in part says: "No formal charges against Mr. Palmer were ever in fact filed with or referred to the Committee."

"Should the Senate or the Congress conclude that an investigation of Mr. Palmer's Administration of the Office of Alien Property Custodian would be of service, or of interest to the public, such investigation, of course, can be ordered and held under the proper resolution of the Senate."

Some time later Senator Calder introduced a resolution for such an investigation which was referred to the Committee on Contingent Expense of the Senate and that Committee reported favorably thereon—the resolution was debated from time to time, but never reached a vote and was on the calendar until it died with the close of the session, June 4th, 1920. Senator Frelinghuysen's reference to this matter will be found on pages 234 and 238 of this volume.

FOREWORD.

On completion of this compilation a fortuitous occurrence prompted me to show it to Mr. Harvey T. Andrews, of the New York Bar, who approved the same and suggested its publication.

At my solicitation that eminent lawyer and gentleman has reviewed it. That review I have hereto adjoined.

To it, I call the particular attention of my fellow members of the Bar and others who may have occasion to refer to this volume. I hope the same may be of service on a subject of momentous interest and magnitude which is but imperfectly appreciated and understood,

New York, Feby. 11, 1921.

Editor and Compiler.

CHARLES R. ALLISON, Esquire,
115 Broadway,
New York City.

Dear Mr. Allison:

"He disposed of rights in plants, goods and patents at his own unfettered will. Stockholdings passed from Germans to Americans at auction though there had been a suspicion that such transfers were sometimes a fiction."

These words form part of a leading editorial in what is concededly one of the rampant anti-German newspapers of this country, *The Providence Journal*. The heading of the article is "The Alien Property Account," and the words used refer to A. Mitchell Palmer, present Attorney General of the United States. Further in the article it says, "If errors have been committed the Germans will discover them; if wrong has been done we shall escape national mortification by righting it before taking steps toward the final settlement." These words from such a source may well make the American people pause and think.

You have asked me to review your book on the Alien Property Custodian law or perhaps to give a foreword as to the nature of its contents as it appears to me in the light of my experience and knowledge of the law. With the impression created by reading the above-mentioned editorial of the 9th instant I opened your book and diligently perused it to the end.

I note that at the beginning you give what appears to be a verbatim account of the hearings before the Committee of the House of Representatives wherein all four Departments of the Government appeared through their accredited representatives: the Secretary of State, Mr. Lansing; the Secretary of the Department of Commerce, Mr. Redfield; the Attorney General of the United States through Mr. Warren, and the Department of Domestic Commerce through Dr. Pratt. I note that they all agreed as to the principles underlying the bill and the purposes to be accomplished, which, summarized briefly, seem to be as follows: "a protection to the property owner" "during the passions of war," the listing of all alien property with the Custodian and the preservation and conservation of the same without confiscation, and its ultimate return at the end of the war by Congress.

The above meeting was held on May the 29th, 1917. Thereafter it was debated on the floor of the house until on or about July the 12th, 1917 in a discussion involving many pages of the Congressional Record of those dates. It was then sent to the Senate where the Committee on Commerce held many hearings and carefully considered the same and reported the same to the Senate on August the 15th, 1917. It was recommitted to the Committee and again reported on August the 30th, 1917 and the Committee of both Houses met and agreed on a report which was again submitted to the Senate on September the 11th, 1917, and debated and, as will appear by the statement of the chairman of that Committee, Mr. Vardeman, on page 167

of your volume, they say that it was the result of "ripe thought and mature consideration" not only of the House of Representatives but of all of the Committees having charge of the same. The Senate proceeded to debate the bill, many of the most prominent members of that body giving it great attention, and it was finally passed and became a law on October the 6th, 1917. We therefore have a record of approximately six months' deliberation by all of the leading Cabinet officers of the Government, the Committees and members of both Houses and the deliberate judgment of the entire administration then in power. And thus the bill became the law and in conformity therewith the President on October the 22nd, 1917, appointed A. Mitchell Palmer Alien Property Custodian. And so it remained impressed with the idea of its original framers: that of trusteeship, of custodianship, of conservation without confiscation throughout all of the debates and throughout all of the changes and throughout all of his administration until March the 28th, 1918, when an amendment which had been proposed by Mr. Palmer himself and which had been bitterly fought for by him before the Committee on Appropriations in the Senate was reported to that body. Your description of this phase of the matter is recorded on pages 310, 311, 312, 313 and 314 of your volume.

This gave what is known as the power of sale to the Custodian but, mark you, it lacked in all its material elements the profound thought and care given to the enactment and surrounding the hearings and debates of the original act. It was rather an amendment *which was attached as a rider to the urgency appropriation bill* (itself a large volume seldom or never seen by any person outside of the legislative chamber),—Mr. Palmer himself tells us, as will be found recorded on page 262 of your volume, that he resorted to the above "time-worn device."

Two periods had thus passed, each adhering strictly to the straight path laid out by the original framers of the

act and the act itself as passed in its pristine form by Congress. The first period consisted of six months of deliberation and preparation in enactment and the second period of six months of execution by Mr. Palmer as Alien Property Custodian. He tells us in his "Washington Star" interview of May 25th, 1919, and in his other writings which you refer to on pages 261 and 262, that the original act was a piece of innocuous legislation page 308 and implies that it had not received proper consideration and as he appears to say on numerous occasions which will be found particularly on page 276, "it made the Alien Property Custodian merely a benevolent conservator," and that he was "thus limited to the administration of the trusts coming into his hands." He complains also that he was "directed to act for the original owners as a sort of guardian and an official protector of their rights." At this time it appears that Mr. Palmer had come to the conclusion that he was a warrior as appears on page 244, so thus the new and disturbing period came into being known as the period of confiscation and destruction. This period began immediately after the above amendment became effective. Your book on page 313 plainly marks the time of demarcation between the straight and narrow path of duty as outlined in the above two periods and the ushering in under deceitful processes of the new regime which was to culminate in a reign of terror.

It would appear by reading the discussion on the floor of the Senate on March the 11th, 1918 (page 313), when this additional right of sale and seizure by Mr. Palmer was under discussion, that Senator Knox observed that such a step would be a violation of existing treaty rights between Germany and America and that Germany had been observing the treaty and had been "watching us to see whether we do the same." Senator Knox particularly asked his fellow senator, Mr. Dillingham, if this could be done "notwithstanding the treaty or whether they could do it within the lines of the treaty and under the general

rules that prevail in war?" and Mr. Dillingham said, "*In reply to the Senator from Pennsylvania, I will say the treaty was not discussed. A question was asked whether there was a treaty and a prominent member of the Committee assured us there was no treaty with Germany and the matter went without further discussion from that standpoint of the case.*"

It also appears in your book at page 310 that when this amendment was reported by the leader of Mr. Palmer's own party, Senator Martin, on March the 11th, as a rider to an appropriation bill that Senator Gallinger informed the Senate that "it is not a unanimous report of the Committee. There are some of us who do not agree with it."

It further appears on page 312 inferentially at least, Senator Dillingham again accuses Mr. Palmer and his friends of deceit on this particular matter by stating "and it is a remarkable fact, Mr. President, that Mr. Palmer—who came before that Committee on purpose to tell us why that amendment should be adopted—failed after speaking an hour to give the only reason that has been urged, the one just given by the Senator from Virginia."

This in a nutshell gives a plain picture of the law as it stands today.

Perhaps you sum up the situation correctly on page 268 wherein you show through a series of questions by Representative Moore to the present Alien Property Custodian, Mr. Garvan, that Mr. Palmer "did get that power by coming in at a time when all was excitement and secured what he wanted by the passage of riders to appropriation bills"; and further on page 269 wherein you refer to the fact that "all amendments which radically changed the purview of the original act so as to make its validity doubtful "were injected by Mr. Palmer's influence with his own party who were then in power," and that all this was done during the period of war excitement "and without proper committee consideration and in every instance as riders to appropriation acts which

precluded a fair and proper vote on their merits upon the floor of Congress."

Taking a large view therefore of the situation and visualizing the matter from the first conception of the original act, the changes therein, the methods employed to effectuate the same, the operations of the act and the performance thereunder of the Alien Property Custodian, I am impressed with a further quotation from the editorial heretofore mentioned when they ask "Did this amendment give opportunity to conscienceless Americans to extort a profit by bleeding the property disposed of through the Custodian?"

A careful reading of the book will at least disclose the following: The original act framed with deliberate care and profound thought looking forward to the maintenance of international law, national honor and the integrity of existing treaty rights, was changed over night in its most vital parts and amended through the influence of a self-seeking public official temporarily crazed with the lust for power so as to place in his hands undreamed of authority which he used with such unthinkable abandon as to bring down upon himself the words of criticism used at the beginning of this letter.

I am sure the members of the profession will be profoundly grateful to you for the publication of these committee reports and the debates upon the original act as well as the amendments thereto.

In addition I find that your volume contains a great deal of other valuable data and material and I myself am deeply grateful to you for the result of your labor and know that I shall find it always a very valuable document to have ready at hand when I need information on this subject.

Wishing you the very best of success, I remain

Very truly yours,

HARVEY T. ANDREWS.

February 11th, 1921.

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HEARINGS BEFORE HOUSE COMMITTEE ON
TRADING WITH THE ENEMY.

House of Representatives,

Committee on Interstate and Foreign Commerce,

Tuesday, May 29, 1917.

The committee this day met, Hon. W. C. Adamson (Chairman) presiding.

The Chairman: The committee will come to order. Gentlemen, the chairman called this meeting in order that we might consider H. R. 4704, which is urgently pressed by the administration and the friends of those who desire to win this war as quickly as possible and cut off all commercial intercourse with the enemy. We have the good fortune to have present several distinguished gentlemen, and I think they will be able to enlighten us on the bill. We will be glad to hear from them—Secretary Lansing, Secretary Redfield, and other gentlemen from their respective departments.

Statements of Hon. ROBERT LANSING, Secretary of State; Hon. WILLIAM C. REDFIELD, Secretary Department of Commerce; Hon. CHARLES WARREN, Assistant Attorney General, and Dr. EDWARD E. PRATT, Chief Bureau of Foreign and Domestic Commerce, Department of Commerce.

Secretary Lansing: Do you want me to make a general statement or do you want to take up the bill in detail, although I presume the members of the committee are familiar with it?

The Chairman: No doubt you gentlemen are more familiar with it than the committee, and therefore we would be glad to have you make such statement as will aid us in arriving at a decision.

Mr. Montague: This bill was introduced on Friday, I understand, and it did not reach me until yesterday, Monday, so that I have had very little time to go over it.

Mr. Esch: I suggest that the Secretary make his statement, and then we will interrogate him.

Secretary Lansing: The general purpose of the bill you have already stated, Mr. Chairman, that is, to stop commercial intercourse with the enemy. The basis of the bill is not, as it is in the case of the action that has been taken by the allied Governments, the nationality of the persons affected, but the domicile of the persons. We consider that the only trade that will materially aid Germany is that which reaches the German soil, and to prevent this is the purpose for which this bill is drawn. You will observe, in the definition of the word "enemy" that an enemy is a person, corporation or otherwise, who resides in the territory of Germany or an ally of Germany or in territory occupied by their armed forces, or in neutral countries, and doing business in such territory, or an official or agent of the Government of the enemy or his ally. By proclamation the President may extend this definition to include natives, citizens, or subjects of the enemy or his ally wherever resident, *i. e.*, in neutral countries or even in the United States. Except this discretionary power of the President to extend the definition of "enemy" there is nothing in the bill comprehending the idea of a blacklist except so far as there is an attempt at false domicile; that is, where an American or a neutral company or persons acts in the place of the German company or person domiciled in Germany. That is the general basis.

So far as details of the bill are concerned, they are set forth more particularly in Section 3 of the bill and, briefly, they are, to trade, or attempt to trade—I will not re-

peat the exact language—with or for the benefit of an enemy or the ally of an enemy. Of course, with the relationship that exists between the central powers, particularly between Austria and Germany, we would accomplish very little in stopping trade with Germany unless there is power to suppress trade with an ally of the enemy, because if trade was uninterrupted the ally would turn over the profits to the German Government.

Mr. Sims: That would apply to Bulgaria and Turkey, also, I presume?

Secretary Lansing: Yes; it applies to all, if it becomes necessary. But, of course, their trade is small compared to the trade with Austria. The power of restriction, however, is more or less discretionary. As I understand the operation of the bill, its provisions will only be put in execution so far as it becomes absolutely essential to carry out the purpose of the act, which is to suppress trade that benefits Germany and German subjects.

* * * * *

Then there is the transfer of stock to American individuals in order to avoid the consequence of belligerency.

The provision in Section 5 gives the President power to suspend the act as to an ally of the enemy by proclamation. The necessity for that is that we may find that it is needless to unduly hamper trade in that respect, and therefore the right is given the President to suspend the act in that regard. But at present it would seem to be advisable to have the provision as to an ally of an enemy in the act.

Section 6 deals with the administration of the act, particularly in relation to the alien property custodian.

The Chairman: I wish that either you or some other gentleman, in dealing with that and subsequent sections, would fully explain that it will not in operation unduly

injure people who in good faith during the war are carrying on trade. I have had some letters of complaint in regard to that section and subsequent sections that they might unduly hamper business and do injustice to innocent people.

Secretary Lansing: That falls more particularly to the Department of Justice, and I think that the representative of that department, who is here, will be able to explain that more satisfactorily than I can. I am attempting to deal merely with the portion of the act that applies to our foreign relations rather than to the execution of it. The balance of the act deals more particularly with its general application and how it will operate in the matter of continuing patents and the sequestration of enemy property in this country in order to carry out the idea of complete non-intercourse with the enemy.

The Chairman: The letters that I have had on that subject criticize these provisions and charge something like confiscation. I have replied to all of them, stating that there is no such intent in the law, but merely to hold the property in doubtful cases, the whole thing to be adjusted after the war, and that there will be no final injury to anybody.

Secretary Lansing: Exactly. In fact, it is a protection, a very decided protection to the property owner, because enemy property is subject to seizure by act of Congress. There is no question about the fact that under the general principle of international law property of enemy subjects would be liable to seizure, particularly certain classes of property, and this protects them from what might be considered unjust action by the Government because of its hardship on individuals.

Mr. Parker of New Jersey: Is there not danger of our narrowing the power of the President under international law in time of war by passing any such bill?

Secretary Lansing: Well, it does limit him to a certain extent, but I think it is a wise limitation.

The Chairman: Is there not another view in which protection is very valuable? During the passions of war is there not the liability of violence to all such property?

Secretary Lansing: Yes.

The Chairman: And that under this act such property would be protected?

Secretary Lansing: Decidedly so. This will put it in the hands of the Government to protect the property, and it will avoid any lawless acts against it.

The technical matter of patents is dealt with in Section 10, which I will pass over.

In Section 11 provides that all moneys, demand checks, or drafts received by the alien property custodian, shall be deposited in the Treasury of the United States. The enforcement of the act will fall largely under the direction of the Department of Commerce.

The Chairman (interposing): That just provides for the treatment of choses in action?

Secretary Lansing: Yes.

The Chairman: And other physical property?

Secretary Lansing: Yes. The rest of the act is largely a matter of detail as to its operation, penalties to be imposed for its violation, and the jurisdiction of the courts, etc. As to the details, others can give you more information than I can.

The Chairman: I think the committee would like to have from you or some other gentleman a general statement of the necessity for the provisions contained in the bill, the different ways in which communications can be had that will benefit the enemy, the different kinds of property that needs protection, and so on. The committee would be glad to hear some general reason why such legislation as this should be enacted.

Secretary Lansing: I think that Mr. Charles Warren, Assistant Attorney General, is much more familiar with those details than anyone else.

The Chairman: A great many people are liable to say, What is the use of such a drastic law as this? And we would like to get clearly in the record why it is absolutely necessary.

Secretary Lansing: I am sure Mr. Warren can give you information in regard to that, and also the Secretary of Commerce, who is familiar with it.

Mr. Snook: I would like to ask a question in regard to the provision as to patents. Can you tell the committee what the attitude of the German Government has been toward the holders of patents here since the declaration of war?

Mr. Hamilton: I have received, and I believe other members of the committee have received, communications in relation to the fact that salvarsan is not procurable except from Germany, and that it was necessary to have it for use by the medical profession. Now, what effect will this Section 10 have on such an article as salvarsan?

The Chairman: I will state that I have been in communication with the Public Health Service, and there was a proposition to introduce a separate bill to make these patents available, in order to utilize salvarsan and other remedies obtained from Germany, but I now find that this section as incorporated in this bill is regarded as satisfactory and that it will reach that and other cases.

* * * * *

Mr. Esch: Section 10, as I understand it, requires a license to be granted to the manufacturer, and that 5 per cent. of his gross receipts shall be paid into the Treasury, and then, after the emergency, the owner of the patent

can start proceedings in the United States courts to secure a reasonable compensation?

Secretary Lansing: Yes.

Mr. Esch: And that the 5 per cent. is to go toward paying the compensation?

Secretary Lansing: Exactly.

The Chairman: The thing we are trying to reach, Mr. Esch, was to secure the use of it during the war.

Mr. Esch: I think this bill gives the use of it, all right.

Secretary Lansing: Yes; and because it is general it does more than these separate bills.

The Chairman: Mr. Snook's question has not been answered by the Secretary.

Mr. Snook: My question was how it would affect our country if we applied the provisions of this act?

The Chairman: In answer to that question I want you to tell us whether it is not true that Germany declines to declare war on us and absolutely denies that she has made war on us.

Secretary Lansing: Yes. She has not done it affirmatively but she has simply done it negatively.

The Chairman: She hits us and then denies it.

Secretary Lansing: She has not officially acted.

Mr. Hamilton: She does not concede that a state of war exists?

Secretary Lansing: No.

Mr. Esch: Mr. Secretary, how closely does this bill follow the English trading with the enemy act?

Secretary Lansing: It is quite different. Their bill is based on the person and not on the *locus*. We base it on where the person or corporation is doing business; that is, business which gives them the character of an enemy. It is the old rule of enemy domicile that applies. For example, if an American were in Germany and doing

business in Germany this would stop any trading with him. Now, the British bill follows entirely the continental plan, which is to stop trading with the subjects of Germany wherever they are. That is their general plan, and of course applies all over the world to persons of German nationality. We do not do that unless there is a prospect of the profits reaching Germany or in the interest of people resident in Germany.

Mr. Lansing: They confiscated all German patents, did they not?

Secretary Lansing: No. Russia is the only country, and Germany has retaliated. There is a letter here from the Commissioner of Patents in regard to this subject of patents, and he says, in opening:

The European countries at present at war have (with the exception of Russia and a retaliatory measure by Germany directed against Russia only) mutually respected the patents and copyrights and trade-marks of each other's citizens and subjects and have granted privileges of filing applications and paying fees, annuities, etc., necessary to preserve these rights and have granted liberal extensions for filing and prosecuting applications and paying fees.

Mr. Esch: Can that letter be printed as a part of your hearing?

Secretary Lansing: I think it can.

Mr. Warren: I will furnish a copy of the letter for the record.

Said letter follows:

Department of the Interior,
United States Patent Office,
Washington, D. C., May 11, 1917.

Hon. Attorney General,
Washington, D. C.

Sir:

The European countries at present at war have (with the exception of Russia and a retaliatory measure by Germany directed against Russia only) mutually respected the patents and copyrights and trade-marks of each other's citizens and subjects, and have granted privileges of filing applications and paying fees, annuities, etc., necessary to preserve these rights and have granted liberal extensions for filing and prosecuting applications and paying fees.

It is essential that our citizens be permitted to file applications and pay fees and annuities and receive the benefit of extensions, and these advantages can be gained only by similar concessions upon our part.

Moreover, in the patent acts of many of the foreign countries, there are general provisions for the granting of compulsory licenses. These provisions were not found to be of much importance and were in many respects disadvantageous prior to the outbreak of this war, but since the outbreak of the war they have become important in connection with the enemy-owned patents.

Our Government may supply its own needs under existing laws, either directly or through contractors who are protected against suit or interference; the only remedy of the patentee being recovery

through the Court of Claims. But the needs of State governments, municipalities and private citizens cannot be supplied in this way. It is therefore suggested that our patent statute be amended to provide that whenever a state of war exists, the Federal Trade Commission may grant licenses under enemy-owned patents.

I have in a large measure myself drafted and have discussed with Mr. Warren in detail the bill herewith submitted covering the points indicated.¹

Respectfully,

THOMAS EWING,
Commissioner.

NOTE: The "bill" referred to above constitutes Section 10 of the general trading with the enemy bill H. E. 4704.

CONTINUATION OF THE HEARING.

* * * * *

Mr. Montague: I notice in the second section that you define the word "enemy" and I observe that you use the word "domicile" frequently in your oral statement to-day.

Secretary Lansing: Yes, sir.

Mr. Montague: Is it intended to draw a distinction between domicile and residence?

Secretary Lansing: No, I should say not. I was explaining the theory of the bill.

Mr. Montague: Such a distinction is recognized by the courts?

Secretary Lansing: Yes.

Mr. Montague: I did not know whether it was the purpose of this bill—

Secretary Lansing (interposing): I think the word "residence" is a little broader in this particular.

Mr. Esch: We will have several hundred, possibly two or three thousand, pensioners of the United States resident in the central powers. Would the payment of those pensions be suspended during this emergency?

Secretary Redfield: They would go to the alien property custodian, or they could be made by license.

Mr. Esch: You have power to grant a license?

Secretary Redfield: Yes.

Secretary Lansing: If it was found advisable I think we would do that by classes rather than by individuals.

The Chairman: I suppose the fundamental objection that would apply there is that in sending money to anybody in those countries there would be the danger of confiscation?

Secretary Lansing: Yes.

Mr. Esch: There are some very powerful German fire insurance companies that are doing business in the

United States. I do not know whether they have an independent treasury in the United States out of which they pay losses in the United States or whether those losses are paid from the German offices. How would that sort of business be affected by this bill?

Secretary Lansing: I think that in most States they are covered largely by bonds and other securities deposited with the superintendent of insurance.

Secretary Redfield: Mr. Warren tells me that matter is already covered by a proclamation which prohibits the transmission of funds abroad, but it would be possible to arrange these branches so that they can operate entirely independently.

Mr. Esch: So that business would not be affected.

Secretary Redfield: It need not be affected.

Mr. Esch: You require the listing of all alien stockholders and bondholders. Would that apply to stocks and bonds held by alien enemies in the railroads of the United States?

Secretary Lansing: Yes.

Secretary Redfield: Those lists already exist, and we would have to have copies of them.

Mr. Esch: German life insurance companies have been doing a large business with the central powers. How would their business be affected by the operation of this bill?

Secretary Lansing: Well, I do not know. That would depend a great deal on the action of their Governments.

Mr. Esch: Have they taken any action?

Secretary Lansing: I do not know.

Secretary Redfield: Do you refer to the payment of premiums coming this way?

Mr. Esch: Yes.

Secretary Redfield: That would be, of course, for Germany to say; but the payments to German policyholders

would probably go to the alien property custodian and be held until the war closed, at interest, subject to the disposal of Congress when the war was over.

Secretary Lansing: I hardly think it is necessary to make anything but a very general statement in regard to the needs of this bill, because it has become so customary in all wars to interrupt trade between enemy countries and enemy citizens that it seems to me the desirability of it is manifest. It is essential, in view of the way war is conducted at present, that we should suppress their power by depriving them of the economic resources which they possess.

The Chairman: I apprehend that it would be wrong for us to permit money to be sent direct to the Kaiser, but a great many people in this country say that they are conducting a perfectly legitimate business and have no direct connection with Germany, and that we are unnecessarily interfering with their business. It is such people that we must answer to in framing a bill of this kind.

Secretary Lansing: I appreciate that, but it is the right of an enemy government, except by taxation, confiscation, or requisition, to derive all the benefit from profits that they make in this country. The great pressure to-day upon Germany is an economic pressure—

The Chairman (interposing): I want you, Mr. Warren, or some other gentlemen—I think the committee would like to have it done—to make some general statement about the different ways in which this indirect trade goes on—how it may be beneficial to the enemy and injurious to us and how the property itself might be destroyed if we did not interfere. I have a case in point where a firm reorganized under an entirely different name, and it is asserted that they have connections with Germany and that their profits go to Germany.

Secretary Lansing: Yes; and there is a constant trans-

fer of credits to Germany, and in that way they maintain the national credit.

The Chairman: I had another from New York this morning of the same purport.

Mr. Sims: There is nothing new in the principle of prohibiting enemy trading, is there?

Secretary Lansing: Nothing new at all, and it would be rather novel if we did not prohibit it.

The Chairman: The people we are going to come in contact with under this bill are those who will deny that they are doing any enemy trading?

Mr. Sims: If they are not doing any enemy trading they are not covered by the bill.

Secretary Lansing: We have had hundreds of cases where we know that this trading has been going on and going on in a fraudulent way.

The Chairman: I have a letter from a lady who inveighs most forcibly against this bill, and she winds up by calling it nonsense. I was surprised that she did not give it a harsher name.

Secretary Lansing: So far as detailed cases are concerned there are a variety of frauds that have been perpetrated and various methods of perpetrating them. You could hardly call them frauds; it might be better to say surreptitious trading and underhanded dealings, although in some cases they amounted to frauds. We would have to go through very considerable records to make out detailed cases, but we have had any number of cases. I recall one case early in the war where a German—I do not know whether it was a German individual or a group of Germans—organized a corporation in New Jersey with Americans as directors; they organized for the purpose of purchasing a vessel or vessels for transportation of grain to Germany. There was apparently no other purpose in it than to involve us in trouble with France and

Great Britain on account of the almost certain seizure of the vessel. It was found that an agent had been sent from Germany; he had organized this company, was managing the company, had bought a vessel and had loaned Americans the money to charter the vessel and to buy the grain to be put on board, taking the cargo as security. It seemed manifest that the transaction was in order to raise an issue, if possible, with Great Britain and France, through the nominal American ownership. We have had numerous cases—although none quite so flagrant as that—where undoubtedly the trading was entered into for the purpose of causing friction between us and the enemies of Germany, and they were undoubtedly inspired by the German Government or by German officials.

Mr. Sims: That was before we were at war with Germany?

Secretary Lansing: Yes, that was while we were neutral; but I think we may anticipate similar acts now that we are a belligerent, and we ought to have power to punish the offenders or to prevent the acts.

* * * * *

Mr. Esch: Has the blacklist of the American Transatlantic Company been lifted?

Secretary Lansing: That is still under consideration between the British Government and this Government. There are some very embarrassing things, I can say, about the situation, but I hope we are going to be able to adjust it. It is really very embarrassing.

The Chairman: Have you concluded your statement, Mr. Secretary?

Secretary Lansing: Yes, I have; unless you have further questions.

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Secretary Redfield: Mr. Chairman, I will not make a

full statement now, because I am going to ask to hear Dr. Pratt, the Chief of the Bureau of Foreign and Domestic Commerce. He has some gentlemen waiting in his office who have come from other places to meet him by appointment. I will simply give a little story of the measure, so that you may have before you its origin and its history up to the time the matter was brought before you. A committee was appointed, representing four departments—the State Department, the Department of Justice, the Treasury Department, and the Department of Commerce—to consider what we should do in this particular matter. That committee gave this whole subject very, very thoughtful study. The committee was composed of Assistant Attorney General Charles Warren, the Comptroller of the Currency, Mr. Woolsey, the Solicitor nominate of the Department of State, and Dr. Pratt, the Chief of the Bureau of Foreign and Domestic Commerce of the Department of Commerce. They went over the matter for weeks with very great care. They submitted their draft of a bill to the Secretary of State, the Attorney General, the Secretary of the Treasury, and myself. We made a number of comments upon it, and it was returned to them. It was then again studied with great care, and this is the result of their unanimous report, which was, in substance, conveyed to you. So much for the background that lies behind it.

The theory on which the bill has been prepared, as the Secretary of State has said, is not at all that of the English act. Our thought has not been to go as far and suggest anything as sweeping as that act seems to have involved, but rather, on the contrary, to provide the necessary authority to protect ourselves against aiding the enemy in a way which would provide as little interruption of our commerce as possible. I think I might say at this point that there were some very profound reasons why we

should leave our commerce as free as practicable and why the power of licensing is given here. We are now the world's purse. We have in this country the greatest present source of credit in the world. The nations of the earth are looking to us as the financial power. Now, the basis of our credit in this country is our immense reserve of gold. Those credits depend upon that and those credits can only be maintained if our foreign trade is steadily maintained, for on the maintenance of that foreign trade our ability to give credits, in the last analysis, almost entirely depends. It is of the highest importance now that our commerce be just as free as it can be with safety and that we should continue our trade abroad. And this bill is drawn with that purpose deliberately in mind; hence the exemptions which are permitted in it to those who, for legitimate purposes, conduct such trade. Therefore, before asking Dr. Pratt to speak to you, let me say a word about the complaints of which you have spoken. No person not trading with the enemy is affected by this bill. Anybody who is trading with the enemy in such a way as to do the United States no harm, and can show it, or the enemy no good, and can show it, will be permitted under this bill, or may be permitted under this bill, to continue operating, and the whole effort has been to make the thing as little onerous as is necessary.

The creation of an alien property custodian is a novelty and is in line with that same effort toward equity which impels us to indicate an earnest desire to show to the people with whom, unfortunately, we are engaged in war that here is the opposite of confiscation, and here is the opposite of requisition. A responsible officer of the Government is created, who shall receive the property of an enemy and put it in the safest place known to us—that is, in the Treasury of the United States—and invest it in Government bonds, so that the property of the enemy

in our country shall be used to support the war, but at the same time to remain safely in the custody of the Treasury and to remain there until the war is over. Then this bill does not give to that custodian the final disposition of that property, but it expressly declares that after the war shall have ceased the property thus secured shall be at the disposition of Congress and that it shall be for Congress to say how it shall be handled. It is evident to you, sir, I am sure, what a remarkable power the possession of that enemy property thus safeguarded would be to you if you were negotiating terms of peace. I hardly need do more than to suggest the weight that would give your words, and also as being an act of good faith even toward an enemy.

The Chairman: It might be equal to a considerable indemnity?

Secretary Redfield: Yes; and there are millions of enemy property of that character in this country. I do not know who was the originator of the idea, but whoever has created something as fine in its way as the return of the Boxer indemnity, because the enemy property is all in our hands to bear its share of our expense in fighting the enemy, and yet it is safeguarded so that if it be the will of Congress, under property conditions, it may be returned to him intact and safeguarded by us ourselves during the whole period of the war.

* * * * *

Mr. Snook: I would like to ask you a question about paragraph (b) on page 8. This paragraph is no doubt intended to cover transaction that have been made since the war commenced. The language of the paragraph is:

If any property, money, or other property so held or so owned shall have been, after the beginning of the war, conveyed, transferred, assigned, delivered, or paid to, for

the account or benefit of, or in trust for an enemy, with knowledge or with reasonable cause to believe that such was the nature of the transaction, such assignment, conveyance, transfer, delivery, or payment shall be void.

How is it contemplated that such a question will be determined?

Mr. Warren: That is merely declaratory of the present law in general. Of course that could not be enforced by criminal penalties.

Mr. Snook (interposing): That is the point I want to get at. Suppose this question should arise and you wanted to reach some property that has been transferred in that way. How would that point be determined; that is, as to how it was transferred?

Mr. Warren: I do not suppose that question would come up with the Government unless the Government was suing in a proprietary capacity. The question would come up in a civil suit between individuals, one party assuming to base rights on some transactions that had occurred since the beginning of the war. In this we have just reaffirmed or declared the general principle of law which is now in effect.

Mr. Snook: I thought it was probably intended that the Government could take over some property as this and put it in the hands of the custodian.

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Memorandum Regarding Work Necessary for Administering the Trading-With The-Enemy-Act.

The principal work under the act will be the gathering of the returns of enemy property of all kinds in the United States, the taking over and disposition of all or any part of such property if authorized by the President, and the receipt and disposition of such property as is voluntarily turned over. The work will be administered by two divi-

sions—one headed by the alien-property custodian and the other to be known as the enemy-trade division.

The division of the alien-property custodian will be a fiscal office charged with the receiving of all enemy property, whether turned in voluntarily or otherwise, and its transfer to the Treasury of the United States or to the depositaries mentioned in the act. The division must keep track of all enemy assets mentioned intrusted to depositaries and administer such personal property as can not be transferred to them or to the Treasury. It is highly probable that there are large quantities of raw materials, munitions, etc., that have been purchased by German agents in this country since the war and warehoused in various parts of the country. If it is deemed advisable for the alien-property custodian to take charge of such property, this will considerably increase the volume of the work. Claims of creditors having an interest in sequestered enemy funds must also be handled by this division.

The enemy-trade division will collect the information regarding enemy property, making an inventory of all such assets. This will involve the circularizing of corporations and unincorporated concerns having enemy shareholders and bondholders and the listing of agents, trustees and other bailees of enemy property. There will also be the task of checking up remittances of the corporations reporting enemy shareholders or bondholders as dividends or interest become payable. The receipt of all property and money handed over to the alien-property custodian must likewise be acknowledged by this division. There are about 18,000 corporations listed in Moody's Manual and about 30,000 in Poor's Manual, while the corporations listed in the Income Tax Division of the Treasury Department number about 340,000. A large proportion of these concerns may be found to have enemy stockholders or bondholders.

The division will issue licenses validating specific transactions with enemies, licenses authorizing branches of enemy concerns to continue business operations in the United States, as well as licenses for citizens and corporations of the United States to apply for patents and trademarks in enemy countries, and licenses for changing trade names under section 4. Many of these cases will probably require considerable investigation, as each application must be considered on its merits. The division will also furnish information as to the meaning of the act, draft regulations, prepare forms and questionnaires, make preliminary investigations of apparent infringements of the act, etc. There would, of course, be the almost cooperation between the alien-property custodian and the enemy-trade division.

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If the act is to be administered so as to insure a virtually complete inventory of enemy property in the United States, as well as the systematic and efficient supervision of such enemy property as is turned over to the Government, the appropriation provided for in the act should be regarded as the minimum sum necessary for carrying on the work.

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Mr. Chairman, I have a word or two more before I give way to Mr. Pratt, and what I say may be helpful to the members of the committee, who have not studied this matter as fully as we have and who do not appreciate the need of a bill of this kind to the same extent that we appreciate its need. Commerce with the enemy in and out is helpful to the enemy; it would not take place if it was not helpful to the enemy. He carries on commercial transactions with us because they are helpful to him, if he can, and we carry on commercial transactions with him be-

cause they are helpful to both of us. Now then, to the extent that by commercial transactions we add to his income, whether it be income of individuals or of the nation, we are helping the enemy.

* * * * *

The Chairman: I imagine that when we open a Court of Claims after the war we will find that nobody was loyal to Germany at all.

Secretary Redfield: People often come to us and say that such and such a thing is an entirely innocent transaction and are very much astonished to find that the innocence was not as complete as they thought it was.

* * * * *

Mr. Parker: I see that under section 3 of this bill, it is unlawful to trade or attempt to trade with an enemy, directly or indirectly, and an enemy is defined as a person residing within the territory of the enemy, which does not include these people or the Government of the nation or its officers. I would like to know how under this bill you could stop that particular trade?

Secretary Redfield: We would not under this bill. I was just speaking of that as an illustration of the kind of thing which goes on. Now, as Mr. Warren reminds me, one of the most important ways for doing business is the establishment of credits, and those credits can be transmitted by wireless. The idea is to make as efficient and as kindly a ring around the enemy and his allies as possible. I think that expresses it perfectly. It is to be as efficient as possible, and yet as kindly as possible, so that merely because a man in this Country is a German, we shall not be discriminating against him, and that for our own sake we keep our own commerce moving.

Now, Mr. Chairman, I will ask you to hear from Mr. Pratt.

NOTE.—The full report of the Committee, known as Report No. 85, will be found at the end of this Volume.

TRADING WITH THE ENEMY.

SPEECH

OF

HON. ANDREW J. MONTAGUE,

OF VIRGINIA,

IN THE HOUSE OF REPRESENTATIVES,

Monday, July 9, 1917.

Printed in Congressional Record, July 18, 1917.

The House in Committee of the Whole House on the state of the Union had under consideration the bill (H. R. 4960) to define, regulate, and punish trading with the enemy, and for other purposes.

Mr. Montague: Mr. Chairman, international law, as adjudicated by our nisi prius courts and our Supreme Court, holds that one of the immediate consequences of war is the interdiction of commercial relations between the citizens or subjects of the belligerent nations. International law has been often held by our Supreme Court to be a part of the law of our country, so it is necessary for the committee and the country to realize that from the outbreak of this war all commercial intercourse, with negligible exceptions, between American citizens and German subjects has been abruptly suspended or revoked. Any continuance or revival of this commerce on the part of our citizens can only be had by the express permission of our Government. This seems the accepted Anglo-American doctrine.

* * * * *

Mr. Chairman, it would weary the committee to discuss in detail the cases of our Supreme Court upon this great question. I desire, however, for the sake of brevity, to read the syllabi of a few of these cases taken from the

Digest of the Supreme Court, published by the Lawyers' Cooperative Publishing Co.:

In war the belligerents and all their citizens and subjects are enemies to each other. All intercourse and communication between them is unlawful. (*Jecker v. Montgomery*, 18 How., 110.)

While the existence of war closes the courts of each belligerent to the citizens of the other, it does not prevent the citizens of one belligerent from taking proceedings for the protection of their own property, in its own courts, against the citizens of the other whenever the latter can be reached by process. (*Masterson v. Howard*, 18 Wall., 99.)

Absolute suspension of the right of the citizens of one belligerent to sue the citizens of the other, and prohibition to exercise such right, exists during war by the law of nations; but the restoration of peace removes the disability and opens the doors of the courts. (*Caperton v. Bowyer*, 14 Wall., 216.)

Citizens of a neutral country established in business in the enemy's country may be regarded as enemies and their property as enemy's property. (*The Flying Scud v. United States (The Flying Scud)*, 6 Wall., 263.)

Mr. Chairman, the most abbreviated discussion of this subject would be incomplete without reference to Judge Gray's great opinion in *Kershaw* against *Kelley*, decided in the Supreme Judicial Court of Massachusetts in 1868, and where his extraordinary genius for assembling precedents was, perhaps never equaled by him in his subsequent career upon the Supreme Bench of the Nation. After an exhaustive collocation and analysis, he says:

The result is that the law of nations, as judicially

declared, prohibits all intercourse between citizens of the two belligerents which is inconsistent with the state of war between their countries; and that this includes any act of voluntary submission to the enemy or receiving his protection, as well any act or contract which tends to increase his resources; and every kind of trading or commercial dealing or intercourse, whether by transmission of money or goods or orders for the delivery of either, between the two countries, directly or indirectly, or through the intervention of third persons or partnerships, or by contracts in any form looking to or involving such transmission, or by insurances upon trade with or by the enemy.

So, Mr. Chairman, I may affirm that the suspension, the interdiction, and sometimes the revocation of all commercial intercourse between the citizens or subjects of belligerent nations, upon the outbreak of war, is the accepted Anglo-American law. All such trading or commercial intercourse, unless specially licensed, becomes *ipso facto* illegal upon the outbreak of war. This rule, I may add, is undoubtedly also the law of Europe.

The converse of the rule, namely, that all such trading is permissible until prohibited, is contended for by some publicists, but it does not seem to be sustained by administrative pronouncements or juridicial deliverances, however desirable such international practice may be.

The nearest approximation to such a rule may be found in the new provision of article 23 of the "regulations respecting the laws of land warfare," added under the letter (h) at the Second Hague peace conference in 1907, and which runs as follows:

It is forbidden "to declare extinguished, sus-

pended, or unenforcible in a court of law the rights and rights of action of the nationals of the adverse parties."

The interpretation of this rule by Great Britain and the United States is likely to confine the provision to the right of the belligerent nation to instruct the commanders of its forces in the enemy's country not to declare such rights extinguished, suspended, or unenforcible in a court of law in such country. For example, Germany has no authority to extinguish or suspend such rights on the part of the citizens of Belgium, as a matter of administration, during military occupancy of her territory. This seems to be the interpretation of the rule by Davis, one of the American delegates to the Second Hague conference, as found in the third edition of his very excellent work, *The Elements of International Law*, page 576. I may add that Germany was the author of section (h), but that her practice is in brutal conflict with an interpretation of the rule even so narrow as that made by Davis; indeed, Germany seems rather to have forgotten the rule in all of its aspects, or designedly to have considered it another "scrap of paper."

Mr. Chairman, I venture now to hope I am justified in concluding that this committee, in view of the state of the law of nations as recognized by the United States, realizes that our commercial intercourse with Germany has been brought to an impasse, and that none of this trade, no matter how necessary and beneficial to our citizens, can be resumed or carried on in the absence of appropriate legislation by Congress. This bill, therefore, is submitted as according the most adequate, the most equitable, and the most practicable method for the conduct of all desirable trade.

Mr. Graham of Illinois: Mr. Chairman, will the gentleman yield?

Mr. Montague: I will.

Mr. Graham of Illinois: Before the gentleman leaves that subject I would like to have him expand his statement a little as regards contractual rights between people or citizens of belligerent countries. As to those countries, are these contractual rights ipso facto null and void, or do they continue after the resumption of peace?

Mr. Montague: As a rule, all contracts concluded during war are void. No action upon such contracts will be entertained during or after the war, as I understand the law. But contracts made before the war are usually suspended as to their execution, and the right of action or suit revives after the war to the former enemy.

Mr. Madden: Mr. Chairman, will it interrupt the gentleman if I ask him a question?

Mr. Montague: No.

Mr. Madden: I am interested to find out just exactly what effect this law will have, and I think the people of the United States who are not lawyers are anxious to know what effect this law, when passed, will have upon alien enemies living in this country and doing business in this country.

Mr. Montague: This bill does not recognize "alien enemies living in this country" as enemies. Germans living in America are not enemies; they are entitled to all the rights of American citizens unless their conduct becomes so hostile or offensive that they must be reached by Executive proclamation, as provided for in the bill. The chief definition of an enemy is one resident within Germany or within the territory occupied by her military forces.

Mr. Chairman, perhaps in no former war was trade ever so potential a weapon in the hands of a belligerent as in the present conflict. This is not a war of soldiers

so much as a war of economic forces. Trade extended or trade suspended—commerce wisely withheld or commerce employed to exert the greatest economic pressure—is of transcendent moment now. But, happily for us, this bill seeks to accomplish these great ends by creating no new rules of international law. It recognizes that these rules work an abatement of trade by reason of war, but it undertakes to surmount this barrier by allowing trade under the sanction of law. That is to say, the bill recognizes and affirms the interdiction of international law, and then at once relaxes the scope and vigor of such interdiction by allowing almost all forms of trade under the authority of licenses issued by the Secretary of Commerce, under the direction of the President. In other words, the bill would prohibit all trading with a German subject by an American citizen unless permitted by the license of the Government. The extent and content of these licenses are almost unlimited, depending upon prudent and wise administrative discretion. Therefore it may be affirmed that all trade will be allowed that does not conflict with the national safety and the successful prosecution of the war.

Mr. Fess: Will the gentleman yield for a question?

Mr. Montague: I will.

Mr. Fess: Without this legislation what is the legal status of an enemy resident here? Has he any standing in court at all?

Mr. Montague: A German resident in the United States is not an enemy under the terms of the bill, unless he should be so declared subsequently by the proclamation of the President, in which case he would have no standing in court.

Mr. Fess: He could not sue on a contract?

Mr. Montague: Not unless the contract were one of the exceptions contemplated by general international law.

Mr. Fess: And therefore this legislation is simply to enable him to do what otherwise he could not do.

Mr. Montague: The gentleman in his interrogatory has stated the response to his question. Under existing international law there is no forum in which enemies can stand to protest or enforce their contracts. The courts do not open their doors to enemies.

Mr. Fess: The citizen of an enemy country resident here has no rights under the patent law, has he—rights that he had already secured before the war? Such rights, either under the patent law or the copyright law, do not longer exist, do they?

Mr. Madden: Will the gentleman answer a question right there in connection with this?

Mr. Montague: Yes.

Mr. Madden: Suppose that some German patentee has entered into a contract with an American citizen to manufacture his product in America for sale to the American people. What becomes of the contract after the declaration of war?

Mr. Montague: It is suspended under existing law—that is, the general law. This bill gives reciprocal rights as respects patents.

Mr. Madden: Would there be any means by which an American citizen having any such contract could prosecute the business under the contract during the pendency of the war? He may have invested a lot of money.

Mr. Montague: He may conduct the business under the license provided in this bill. Under this bill the citizen can obtain a license to do everything provided in the original patent.

Mr. Madden: Would there be any means by which the money could be impounded?

Mr. Montague: This bill undertakes also to do that if

the income of the enemy is in form of money or demand notes.

Mr. Madden: Yes; so that he could continue to do his business without losing his investment.

Mr. Montague: The enemy patentee would not continue to do business, but the American licensee under the patent would do the business, being ultimately liable for certain profits or royalties prescribed in the bill.

Mr. Hulbert: Do I correctly understand that the purpose of this bill is to provide rules and regulations for the carrying on of business which now we are permitting to be carried on as a mere matter of suffrance?

Mr. Montague: Of course trade now carried on is carried on in violation of general international law and at very great risk to those conducting it. They may be violating international law, and these violations may be recognized by the American courts without congressional legislation.

Mr. Fess: Will the gentleman permit an interruption?

Mr. Montague: Yes.

Mr. Fess: The general option regarding the enemy trading act has been that it has an element of punishment in it, but instead of that this is a friendly attitude toward the enemy citizen—

Mr. Johnson of Kentucky: Enemy resident.

Mr. Fess: Enemy resident. It is in his behalf rather than against him?

Mr. Montague: The first intention of the bill is to give the German resident in the United States almost every right that a citizen has. The German resident can be disturbed, not by the first operation of the act, but by the subsequent proclamation of the President, issued in pursuance of authority given in the act, manifestly to be done only when it is apparent that the German or ally of Ger-

many residing in America is giving aid or comfort to the enemy or doing some act of somewhat similar character.

Mr. Stafford: Will the gentleman yield?

Mr. Montague: I will.

Mr. Stafford: Do I understand that this bill confers upon the President any authority to grant to an alien subject doing business in this country the right to sue in the courts to enforce his contract?

Mr. Montague: If he is a resident of this country, he has that right under this bill without the proclamation of the President.

Mr. Stafford: If so, where is that authority?

Mr. Montague: In the very terms of the bill defining an enemy, whereby German residents in the United States have all rights in this respect of native-born citizens, unless these rights be recalled by the proclamation of the President for hostile conduct on the part of the German resident in the United States.

Mr. Lenroot: Will the gentleman yield?

Mr. Montague: I will.

Mr. Lenroot: With reference to the statement the gentleman has just made, that the purpose of this bill is not to infringe in any way upon international law, I wish to ask the gentleman with reference to section 2—

The word "enemy" shall be deemed to mean any resident outside of the United States and doing business within such belligerent territory.

Mr. Montague: Where is the gentleman reading?

Mr. Lenroot: At the bottom of page 1 of the committee substitute. I want to ask the gentleman whether that does not violate international law in this, that, irrespective of whether the business of the resident outside of the United States is within belligerent territory or not, if he does any business within belligerent territory it makes

him an enemy, not only for such business but for all business done by that resident, and is not that in violation of existing international law?

Mr. Montague: The purpose of the bill is to make neutral citizens or subjects doing business within the enemy's country enemies. This is not new law. The English trading-with-the-enemy act so determines such neutrals, and I think our Supreme Court declares business so carried on in the country of the enemy by neutrals makes them enemies. Certainly it is not in contravention of international law for the Congress to declare such business residents to be enemies.

Mr. Lenroot: I call the gentleman's attention to the consequence of section 7, where it renders void any contract or payment made to any enemy. To illustrate, a citizen of Denmark, we will say, has an agent doing business in Germany, a very small percentage of his business and a business which he has the right to do under international law; but he has had business dealings with American citizens, not with relation to the business which he has done with Germany but entirely foreign to it. Under the bill as it stands it renders void every contract, irrespective of the kind of business in which the Denmark subject is engaged, and treats him as an enemy, not only so far as business done with Germany, but all business done.

Mr. Montague: I can only repeat that a neutral carrying on business in Germany is an enemy under this bill, and because he does business, the larger part of the business as to that, with citizens of friendly countries does not alter his enemy character. It would be impossible to separate or distinguish his enemy business from his neutral business. His credit, his solvency, could not be separated and apportioned. He has in law a business resi-

dence in Germany, and of necessity he must quoad this business stand as other residents of Germany.

Mr. Lenroot: But Section 7 has no exceptions, but renders every contract void.

Mr. Montague: That seems true, but there is no practicable way of distinguishing and separating his business as to enemy credits and neutral credits. It is one business, regardless of the character or residence of the purchasers or contractors.

Mr. Chairman, returning now to my line of argument, I have heretofore suggested that the definition of enemy found in the bill is significant, for it is determinative. This is the Anglo-American definition in that it makes the residence of the person in enemy territory the test of the enemy character, in contrast with that of Europe which makes nativity or nationality the test. A German subject residing in America, for example, is not *per se* an enemy, and under this bill is only an enemy when the proclamation of the President so declares him upon grounds of public safety.

Mr. Lenroot: Will the gentleman give his construction of the phrase "resident outside of the United States doing business within such territory"?

Mr. Montague: I have heretofore discussed this definition and test of enemy character, and endeavored to show that it was in no sense novel or an extension of the rule recognized by England and by the United States. I will now answer that it would be most unfortunate to exclude enemies falling under this definition, for it is this class of enemies who by indirect methods and circuitous routes carry on trade of America to strengthen the credit of Germany.

Mr. Lenroot: The gentleman's construction is that it means all business done by that resident, if he does any business within enemy territory?

Mr. Montague: Yes; his business is not susceptible of division into lines or degrees of hostile activity or friendly activity. No such apportionment is practicable, and a definition of enemy into such a divided character would destroy the entire definition. He cannot be half enemy and half neutral at the same time.

Mr. Lenroot: How does the gentleman think the United States would have considered Germany's action if, prior to the beginning of the war, she had treated every citizen who did business with England as an enemy and forfeited all property held in German by that citizen?

Mr. Montague: Germany would have had a right to so hold if he did business within England.

Mr. Lenroot: Absolutely not, under international law—only that part of the business done with England would she have a right to forfeit.

Mr. Hill: Mr. Chairman, will the gentleman yield?

Mr. Montague: Yes.

Mr. Hill: There is one question that troubles me a little in regard to this bill and that is this: What becomes of the dividends of railroad companies due to foreign stockholders? For many years the great railroads of the country have been placing loans abroad and many of them are held there now represented by bonds and stocks. Understand me, I am in sympathy with the general provisions of the bill, but I would like to know what becomes of future dividends and future interest upon stocks and bonds, amounting to millions and millions of dollars due to foreigners.

Mr. Montague: I am answering the gentleman generally. The bill provides machinery by which there shall be a complete disclosure and discovery of all foreign stockholders and their interests, and provides that that interest shall be impounded and cared for by our Government during the war.

Mr. Hill: How cared for? Is it compulsory that these dividends and that interest shall be paid to the Secretary of the Treasury, or can it be held back by the companies owing the debt?

Mr. Montague: It will be compulsory in this sense, that the Secretary of Commerce shall make rules and regulations with respect to the payment. The report is compulsory, the collection of the money reported may or may not be compulsory. I imagine a great deal of it will never be attempted to be collected.

Mr. Hill: Then there is no definite provision in the bill?

Mr. Montague: There is a definite provision in that the bill gives ample authority to deal with that subject. Administrative discretion, under appropriate regulations, is provided for.

Mr. Hill: But no specific provision is made by the bill itself, except that millions of dollars are to be put into the hands of the Secretary of the Treasury if the Secretary of Commerce shall so prescribe.

Mr. Montague: One of the objects of this bill is to put those particular millions into the hands of this Government if it is deemed wise or necessary so to do. If it is money or demand notes, it goes into the Treasury and can then be invested in Government bonds and certificates by the Secretary of the Treasury.

Mr. Hill: Is there any provision made for a subsequent payment to the owner of that property?

Mr. Montague: After the war?

Mr. Hill: What is the provision then made? As I read the bill the owner of a patent can sue and recover for royalties and for use, but there is no provision in the bill whatever for the return of dividends and interest upon stocks and bonds, an investment which we ourselves have solicited from investors in foreign countries.

Mr. Montague: The question of patents is a reciprocal one.

Mr. Hill: Certainly.

Mr. Montague: That right is given provided the enemy nation accords a similar right to the citizens of America. There is a provision made that all money and property may be impounded by the Government. If it is money it can be reinvested by the Secretary of the Treasury. At the end of the war Congress may deal with all property so impounded. No hard-and-fast rule can be made now, because the question of indemnity, of offsets, will arise and we should fortify our Government for the final negotiations of peace.

Mr. Hill: Then, as I understand it, it is practical confiscation now, but subject to the courtesy and kindness of Congress after the war is over, so far as actual money is concerned, but giving a legal right to recover in case of patents?

* * * * *

Mr. Hill: That might be. I do not want to take the gentleman's time, but I want an understanding of this situation, because it is true that we shall in the future, as in the past, probably be applicants for the investment of foreign funds in the development of the industries and the railroad situation of this country, and no one needs it more than the railroads do now. What position are we going to be in if we confiscate the stocks and bonds owned abroad and put the dividends and interest from them into the Treasury of the United States for the Secretary of the Treasury of the United States to hold, to invest, to sell, and make no provision whatever at the time we do it that there shall be at least a prescribed legal way for the owner to come back and make claim against the United States?

Mr. Montague: I think the gentleman's assumption that the bill authorizes confiscation is a violent one.

Mr. Montague: The disposition is to hold it in safety, and use it to our advantage during the war.

Mr. Hill: Why not let the companies hold and refuse to pay the dividends and interest to the foreign stockholders instead of taking it out of investments. Let them refuse and hold it and report to the Government they have got it, and let the Government authorize them to hold it back, absolutely hold it back and not pay it over until—

Mr. Montague: Because in war enemy property can be best held and cared for by the Government itself. It is primarily the function of government to deal with enemy property.

Mr. Hill: I heartily agree with the gentleman on that proposition.

Mr. Montague: That is what the bill endeavors to accomplish.

Mr. Hill: Why not make some declaration of what will be done with it after the war is over?

Mr. Montague: Because you cannot make a proper disposition in advance of the end of the war. We preserve this property in its integrity until the war is over, and then we will deal with it in the final negotiations.

Mr. Hill: These dividends and interest must be paid to a United States custodian?

Mr. Montague: Yes.

Mr. Hill: And held by the Secretary of the Treasury until after the war is over.

Mr. Montague: The dividends go into the Treasury.

Mr. Hill: There is no provision whatever for the presentation of claims on the part of owners, except that they must trust entirely to the action of Congress

after the war is over. Do I understand the gentleman correctly?

Mr. Montague: In so far as the Government has taken possession of the money or other property.

Mr. Hardy: If the gentleman will permit, it seems to me the purpose of this bill is to leave the international rights of citizens of different nationalities for adjustment between the nations now at war after the war is ended.

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Mr. Montague: The gentleman correctly states it. I will say that was in my mind when I replied to the gentleman from Connecticut that the Government was a quasi bailee. Now, the increment, the interest, goes to the custodian, and the custodian turns it over to the Secretary of the Treasury, who may invest it in Government bonds or certificates.

* * * * *

Mr. Mann: I shall be glad to know where that is in the substitute.

Mr. Montague: Mr. Chairman, I now desire to proceed in my own time. When interrupted, some minutes since, I was addressing my self to the definition of enemy, the enemy to whom trade and intercourse and communication are forbidden in this bill. I now desire to direct attention to the kind of trade and intercourse interdicted. The interdiction is very ample, very comprehensive; it embraces all forms of trade and commercial intercourse and communication; it forbids the transportation of an enemy or the ally of an enemy; it forbids the transmission out of the United States of all letters, documents, writings, pictures, diagrams, maps, or other forms of communication intended to be delivered to any enemy or his ally—prohibitions in the main and in principle long recognized by international law.

Mr. Chairman, it should be observed that these interdictions are at once comprehensive and definite. We know what is forbidden. We do not have to grope and search for meaning or subjects or argue for authority. But if the interdiction is of ample extent, so are the exceptions to the interdiction, for the doing of all the things prohibited is allowed in the next line of the bill. In one line, so to speak, we are told what we must not do, and in the next we are told that all these things can be done if properly sanctioned by the President under the form of licenses issued by the Secretary of Commerce under appropriate rules and regulations. So the character and scope of the licenses constitute the real measure of the modifications, the real extent of the relaxation, of the interdictions imposed by the bill. The prohibition and the exception go hand in hand.

Mr. Chairman, commerce in its ultimate analysis is property, and it is this property and the credits based thereupon that we wish to withhold from the enemy. To reach this end the bill provides for the discovery and disclosure of enemy property and a report thereof. So, under appropriate regulations, with the approval of the President, all corporations, associations, companies, or trustees within the United States must make a report enumerating every officer, director, or stockholder who is an enemy or ally of an enemy, together with the amount of stock or shares owned by such enemy, director, or stockholder. I will not, however, elaborate these provisions, as the interrogatories and colloquies heretofore occurring in my time have covered the subject.

But, Mr. Chairman, this property must be conserved. The report of its existence and character having been first made, the next step will be the taking over of the property by the Government, should it be proper and expedient to do so. It should be observed that the discovery and re-

port of such property is compulsory, but its acquisition by the Government is discretionary. When acquired, however, it is manifest that some agency of Government must become the custodian of this property. To this end the bill provides the agency to be known as "the alien-property custodian," who is empowered to receive all money and property in the United States due and belonging to an enemy or to an ally of an enemy, and who is to hold and account for the same under prescribed regulations. This custodian is appointed by the Secretary of Commerce, with approval of the President. He receives a salary not exceeding \$5,000 per annum, must give approved bonds for the discharge of his duties, and the clerks, investigators, accountants and other employees necessary for the conduct of the office are to be selected from the list of eligibles prescribed by civil-service regulations and methods.

Mr. Chairman, in this connection a very novel and interesting feature of this bill should at least be brought to the attention of the committee. This is a provision authorizing the alien-property custodian to deposit all moneys, including checks and demand drafts, in the Treasury of the United States, and that this money may be invested and reinvested in United States bonds or certificates of indebtedness, and the interest and increment thereon may be used in the conduct of the war.

The holders of mortgages and liens, if not enemies or allies of the enemy, have their rights protected as far as possible. For mortgagees and alienors may enforce their liens under such regulations and after such notice as the Secretary of Commerce may prescribe, provided, however, that the regulations shall require no other notice than that required by the terms of the contract or the law in force at the time of making the contract of mortgage or lien. And, generally speaking, contracts entered into

prior to the war between citizens or corporations of the United States with an enemy or ally of an enemy may be terminated upon notice in accordance with the terms of such contracts when served upon the alien-property custodian, and the notice so served is as effective as if served upon the enemy or ally of the enemy. .

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DEBATE IN THE HOUSE.

(Congressional Record, July 9th, 1917.)

The Chairman: The House is in Committee of the Whole House on the state of the Union for the consideration of the bill H. R. 4960, which the Clerk will report.

The Clerk read as follows:

A bill (H. R. 4960) to define, regulate, and punish trading with the enemy, and for other purposes.

* * * * *

(Congressional Record, July 9th, 1917.)

Mr. Lenroot: Mr. Chairman, I asked the gentleman from Virginia [Mr. Montague] some questions during the early portion of his speech, as to whether or not this bill in any of its particulars violated existing international law. He replied that it did not, that it was not the intention of the committee in reporting the bill to do anything other than to mitigate the harsh conditions of existing international law, and I am entirely in sympathy with the committee in that, but in Section 2, defining the word "enemy," we find this language:

The word "enemy" as used herein shall be deemed to mean:

Any individual, partnership, or other body of individuals, of any nationality, resident within the

territory (including that occupied by the military and naval forces) of any nation with which the United States is at war—

And this is the language to which I particularly wish to direct attention:

or resident outside the United States and doing business within such territory.

Section 7 of the bill makes void all contracts of every character and payments made after the beginning of the war to any such enemy. I contend that that is clearly in violation of international law, and such a violation that, if it had been made by Germany when we were neutral, would have called for notes and condemnation second only to the condemnation with which the submarine warfare was met by us. It will be observed that this is not limited to business done with the enemy by residents outside of the United States. If it were so limited, it would be proper and in accordance with existing international law, but as the language reads, if anyone outside of the United States in a neutral country has an agent in Germany for the purpose of carrying on a business which he has a perfect right to carry on under international law, the existence of that agency in Germany makes that man an enemy not only so far as the business with Germany is concerned, but so far as all business is concerned, and renders void all contracts that he has made in this country.

Mr. Montague: Mr. Chairman, will the gentleman yield?

Mr. Lenroot: Yes.

Mr. Montague: Does the gentleman think his argument is wholly sound in consideration of the proviso found on line 21, on page 9?

Mr. Lenroot: The proviso has nothing whatever to do with it, because if the payment is made to a person in

Holland, we will say, and it is known at the time the payment was made that that Holland party had an agent in Germany, but that the subject of transaction had nothing to do with Germany, might have concerned England, nevertheless the contract and the payment would be absolutely void under the bill. The proviso does not in any degree limit it or rectify it. What is international law on the subject? I was amazed at the statement of the distinguished gentleman from Virginia [Mr. Montague], an eminent international lawyer, which he made in response to a question which I put to him. I asked him what we would have thought of Germany's action if, when we were neutral, Germany had undertaken, because of some American citizen carrying on some perfectly legitimate transaction with England, to render void all contracts made in Germany, had undertaken to confiscate all of the property of the American citizen in Germany, because he had done a perfectly legitimate business in England. The gentleman made the surprising statement that he believed Germany would have had the right to so confiscate the property of Americans in Germany. I am very sure upon reflection the gentleman will see that that could not possibly be done without the grossest and most palpable violation of international law. Now, what is the international law upon this subject? I read first from Woolsey, page 297:

But a person having a house of commerce in the enemy's country, although actually resident in a neutral country, is treated as an enemy—

But it does not stop there—

is treated as an enemy so far forth as that part of his business is concerned, or is domiciled there quo ad hoc.

That is to that extent, and that extent only. And in

Hall's International Law, reading from page 494, we find this:

A person though not resident in a country may be so associated with it through having, or being a part-associated with it through having, or being a partner in, a house of trade there, as to be affected by its enemy character, in respect at least of the property which he possesses in the belligerent territory; if he is a merchant—

Mark the words “if he is a merchant”—

in two countries, of which one is neutral and the other belligerent, he is regarded as neutral or belligerent, according to the country in which a particular transaction of its commerce has originated. Things are different when a merchant living in a neutral country and carrying on an ordinary neutral trade has merely a resident agent in the belligerent State, the agent being looked upon as only an instrument for facilitating the conduct of a trade which in other respects is not distinguishable from that of other neutral merchants.

That is the unquestioned international law upon this subject, and yet this bill, as at present framed and reported by the committee, would regard as an enemy and render void all contracts made by anyone residing in a neutral country if he did any business within the territory of an enemy, and before the committee has any right to ask this House to adopt that provision, clearly violating international law as I see it, the House is entitled to some better exposition than the gentleman from Virginia [Mr. Montague] has undertaken to give that it is justified by existing international law. Now, Mr. Chairman, it is important the United States, as it has entered upon this war for justice and democracy,

shall be careful that in the prosecution of this war it shall not itself violate plain and unquestioned principles of international law. We can not be too careful in observing international law in everything that we shall do in the prosecution of this war, and I am sure that the committee has had in mind throughout the preparation of this bill that it has no intention of violating those principles of international law, but rather to mitigate them, but the fact remains that if this bill does remain, as reported by the committee in this provision, it does violate international law, and violates it in such a way that if it had been practiced by Germany when we were neutral we would most vigorously have protested. Indeed, we all remember that while we were neutral England had what was called a blacklist and we protested then.

England made no attempt to forfeit contracts made by American citizens because of their doing business with Germany. What they attempted to do in that black list was to operate upon their own citizens only to prevent them from trading with certain firms. It was merely domestic and municipal legislation. It did not in the least attempt to affect the rights, duties, and obligations of any citizen of any foreign country. It may be—I would not care to discuss that now—that we would have the right to pass any legislation we choose, so far as obligations of our own citizens are concerned, and penalize them in any way we choose, but when we undertake to deal with rights and properties of citizens of neutral nations and say they shall be forfeited and confiscated, we can only do it by violating one of the plainest and most unquestionable principles of international law, and I sincerely hope before we reach the consideration of this bill under the five-minute rule the committee will see to it that this provision, so far as citizens outside the United States are concerned, will be amended so that in treating them as enemies they shall be treated as

enemies only to the extent of business done by them in the enemy's territory. I yield back the balance of my time.

Mr. Esch: Mr. Chairman, I yield 10 minutes to the gentleman from Pennsylvania [Mr. Watson].

Mr. Watson of Pennsylvania: Mr. Chairman, I shall speak more particularly upon Section 10, relative to patents. I am not going to make a very broad address but narrow my remarks probably to one or two patents. Much has been said here to the effect that probably Germany will suffer because of the rules of laws laid down by this bill, but I feel sure that since the Federal Trade Commission has control of it, no injustice will be meted out to any alien patentee.

In the early part of the session I introduced a bill for the suspension of a patent that was issued to a citizen and resident of Germany. The administration afterwards drafted the intent of my bill in Section 10 as part of the measure now under consideration. This is the first bill in the history of our legislation to suspend a patent owned by an enemy. The Department of Justice, in its judgment, did not advise this step without compensation to the patentee. The Magna Charta, which guaranteed the rights and privileges to the English barons, contained the principle that "merchant strangers are, upon the breaking out of war, to be attached and kept without harm to body and goods until it should be known how English merchants are treated by the sovereign of their State, and if the latter are safe there then the former are to be safe here."

In the case of *Brown against the United States*, Chief Justice Marshall said, "It is urged, in executing the laws of war, the Executive may seize and the courts condemn all property, which according to the modern laws of nations is subject to confiscation, although it might require an act of legislation to justify the condemnation of that property which according to modern usage ought not to be con-

fiscated." Thus the rule of civilized nations is to favor moderation and humanity in dealing with the property of an enemy in time of war.

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Mr. Mann: I have not given as much attention to this bill as perhaps I should have given it if I had been here all of the time, but I would like to ask the gentleman a question. Under the terms of this bill a German-owned patent may be worked in the United States, as I understand it, on obtaining a license and upon the payment of 5 per cent. of the gross receipts as royalties?

Mr. Watson of Pennsylvania: Yes. If the sales are \$10,000, then the German patentee would get \$500. If he is not satisfied with the \$500, then he has the right to sue for the sum which he thinks he ought to have.

Mr. Mann: After the war he can commence suit?

Mr. Watson of Pennsylvania: After the war is ended, within the year, he can commence suit.

Mr. Mann: If he can commence suit after the war ended, how does the licensee know on what basis he can carry on the business?

Mr. Watson of Pennsylvania: The person who obtains the license knows he must not only pay \$100 for the license but must also pay 5 per cent.

Mr. Mann: He does not know how much more he will have to pay?

Mr. Watson of Pennsylvania: Under this bill the patentee may sue for a much greater sum than the 5 per cent. if he feels that this amount is insufficient.

Mr. Mann: How is that going to get people to work the patent?

Mr. Watson of Pennsylvania: I do not know, except in cases such as I have just alluded to, where it is very important. The people will be willing to take a risk. In the case of ordinary patents I fancy they would not.

Mr. Moore of Pennsylvania: Mr. Chairman, will the gentleman yield to me for a further question?

Mr. Watson of Pennsylvania: Yes; with pleasure.

Mr. Moore of Pennsylvania: Is there anything in the patent law which requires a foreign patentee to manufacture in the United States?

Mr. Watson of Pennsylvania: Not so far as I know.

Mr. Moore of Pennsylvania: Is it not a fact that England requires of one to whom a patent is issued that manufacture shall ensue within the jurisdiction of England?

Mr. Watson of Pennsylvania: Yes; for instance, in the case of a war with Germany, or any war, if a foreigner obtains a patent in England, and the foreigner refuses to manufacture that patent, a subject of Great Britain has the right to manufacture it within a certain time.

Mr. Moore of Pennsylvania: In other words, while Great Britain grants a patent, it controls it in any event?

Mr. Watson of Pennsylvania: Yes.

Mr. Moore of Pennsylvania: And that is what we have failed to do in the United States?

Mr. Watson of Pennsylvania: Yes; our laws should be amended in order that we may exercise our control over patents issued to foreigners.

Mr. Montague: Mr. Chairman, I yield 20 minutes to the gentleman from Pennsylvania [Mr. Dewalt].

The Chairman (Mr. McKeown): The gentleman from Pennsylvania is recognized for 20 minutes.

Mr. Dewalt: Mr. Chairman and gentlemen of the committee, necessarily in the consideration of this bill we have to do considerably with the question of international law. In fact, as far as we have already gone there has been considerable discussion in regard to that subject. Primarily it should be understood by the members of this committee that during a state of war the sovereign belligerent power has plenary powers. It has the absolute right of confisca-

tion, if you please. It has the undoubted right of use. In other words, the sovereign belligerent power, as against the citizens of the other belligerent, has unlimited powers unless one thing is provided, and that one thing is if there be an existing treaty which operates against that international law.

Now, I know of no clearer explanation of the definite powers given to belligerents under international law than is expressed in the case of the Insurance Co. against Davis. In the starting and beginning of this argument it might be well to refresh our minds upon that subject. Now, what is it? I read:

“That war suspends all commercial intercourse between the citizens of two belligerent countries or States except so far as may be allowed by the sovereign authority, has been so often asserted and explained in this court within the last 15 years, that any further discussion of that proposition would be out of place. As a consequence of this fundamental proposition it must follow that no active business can be maintained, either personally or by correspondence, or through an agent, by the citizens of one belligerent with the citizens of the other. The only exception to the rule recognized in the books, if we lay out of view contracts for ransom and other matters of absolute necessity, is that of allowing the payment of debts to an agent of an alien enemy, where such agent resides in the same State with the debtor. But this indulgence is subject to restrictions. In the first place, it must not be done with the view of transmitting the funds to the principal during the continuance of the war; though, if so transmitted without the debtor’s connivance, he will not be responsible for it. *Washington, J., in Connecticut v.*

Pennsylvania (Pet. C. Ct., 496); *Buchanan v. Curry* (19 Johns [N. Y.], 141). In the next place, in order to the subsistence of the agency during the war, it must have the assent of the parties thereto—the principal and the agent. As war suspends all intercourse between them, preventing any instructions, supervision, or knowledge of what takes place, on the one part, and any report or application for advice on the other, this relation necessarily ceases on the breaking out of hostilities, even for the limited purpose before mentioned, unless continued by the mutual assent of the parties. It is not compulsory; nor can it be made so, on either side, to subserve the ends of third parties. If the agent continues to act as such, and his so acting is subsequently ratified by the principal, or if the principal's assent is evinced by any other circumstances, then third parties may safely pay money for the use of the principal into the agent's hands, but not otherwise. It is not enough that there was an agency prior to the war. It would be contrary to reason that a man, without his consent, should continue to be bound by the acts of one whose relations to him have undergone such a fundamental alteration as that produced by a war between the two countries to which they respectively belong; with whom he can have no correspondence, to whom he can communicate no instructions, and over whom he can exercise no control. It would be equally unreasonable that the agent should be compelled to continue in the service of one whom the law of nations declares to be his public enemy."

Now, I cite this case of Davis and the insurance company simply for the purpose of surely establishing, by this edict of the Supreme Court, what the relation of the parties who

are belligerent to each other clearly are during the continuance of the war; in other words, to reaffirm what I stated in the beginning, that the sovereign power has the absolute right of confiscation if it seeks and determines to enforce it.

Now, the purposes of this bill, may it please the committee, are not for a strict enforcement of the provisions of international law, but they are really in amelioration thereof. They are a relaxing of the strict tenor and effect of international law.

* * * * *

Now, the fact of the matter is this, that as to the power of the belligerent government, and in our case as to the power of the United States, as fixed by international law, we have the determinate right of confiscation if we desire to use it in regard to every dollar's worth of property of any alien enemy wherever he has residence. But this bill does not go as far as that, and it is well for some of those who are vitally interested in the welfare of those who are not naturalized citizens of the United States, and who are really aliens to this territory, to consider primarily this important fact, that the enemy as described in this bill is not described in terms of nativity, if you please, or in terms of citizenship, but he is described in terms of locality.

What do I mean by that? The enemy is a party who lives in enemy territory, or who lives in territory of the allies of the enemy, and it makes no difference whether that party be a citizen of the United States or whether he be a citizen of the alien country. In other words, to repeat what I have tried to make clear, the enemy description is a local description. It is not one of nativity, or of naturalization, or of citizenship. Therefore this bill primarily sets forth to do this, that it does not in any way affect anyone who is a resident of Germany, if you please, now living

in the United States, nor does it affect in any way a party who is, if you please, a resident of Austria and who is now temporarily here, or who has been here for continued time. The same thing applies to citizens of Turkey and of Bulgaria, except in so far as the bill provides that if the emergency demands and the necessities of the case arise the President may by proclamation make those parties who are residents of this country and who are citizens of Germany, or Turkey, or Bulgaria, or Austria, subject to the provisions of this act.

Mr. Moore of Pennsylvania: Will the gentleman yield at that point?

Mr. Dewalt: Certainly.

Mr. Moore of Pennsylvania: The gentleman recalls the discussion about holders of Pennsylvania Railroad stock?

Mr. Dewalt: I do.

Mr. Moore of Pennsylvania: Let us take another illustration which will get nearer to the plain people, that of holders of building association stock, with whom I assume the gentleman is familiar. Taking the gentleman's description of alien residents, does this bill mean that a German alien resident in the United States would be liable to have his stock in a building association seized?

Mr. Dewalt: No; it does not in any way affect the rights of any citizen of any enemy country who is a resident of this country, unless the President, by proclamation, determines that the party shall be thus affected.

Mr. Moore of Pennsylvania: To put it plainly, so that a layman like myself may understand it, a resident of my city who is an alien—

Mr. Dewalt: Who is a German by birth and who never has been naturalized—

Mr. Moore of Pennsylvania: Yes—owns stock in a building association.

Mr. Dewalt: His rights will not be affected by this bill one iota.

Mr. Moore of Pennsylvania: But if a German alien resident in Germany, or in any other unneutral country—

Mr. Dewalt: Or in any country, the ally of Germany—

Mr. Moore of Pennsylvania: Yes—owns stock in a building association or railroad, that would be taken into custody.

Mr. Dewalt: And placed in the hands of the alien-property custodian, and the disposition thereof would await the determination of an act of Congress after the war.

Mr. Moore of Pennsylvania: So that an alien resident of the United States would not be affected in his property rights by this bill?

Mr. Dewalt: He would be absolutely unaffected, unless he misbehaved himself and the President of the United States by special proclamation made him subject to the provisions of this act.

Mr. Moore of Pennsylvania: Exactly. That makes it clear.

Mr. Mann: Does it require a special proclamation?

Mr. Dewalt: When I used the word “special” I meant special in regard to the subject, and not in regard to the individual.

Mr. Mann: It is not a matter of misbehaving. It is a matter of opinion of the President as to whether it is desirable to cut off all communication.

Mr. Dewalt: I should judge that is the primary idea; yes.

Mr. Moore of Pennsylvania: Will the gentleman yield for one more question?

Mr. Dewalt: Certainly. We are all here for information, and if I have it I will give it. If not, I will refer the gentleman to some one else.

Mr. Moore of Pennsylvania: The gentleman is a member of the Committee on Interstate and Foreign Commerce, and I am now addressing him as the spokesman of that com-

mittee. Does this bill have the approval of the President of the United States?

Mr. Dewalt: This bill, as I understand from the information I have received, not only from the chairman of the committee but from the membership of the committee, is the draft of the Department of Justice partially, the Patent Office partially, and the Department of Commerce as well, and has the approval, if you so choose to call it, of the administration.

Mr. Moore of Pennsylvania: By whom was it indorsed before the Committee on Interstate and Foreign Commerce?

Mr. Dewalt: Mr. Warren appeared. He is one of the assistant attorneys general. Mr. Redfield also appeared.

Mr. Moore of Pennsylvania: Mr. Warren, of the Department of Justice?

Mr. Dewalt: Yes.

Mr. Moore of Pennsylvania: Mr. Redfield, of the Department of Commerce?

Mr. Dewalt: Yes.

Mr. Moore of Pennsylvania: And Secretary Lansing?

Mr. Dewalt: I believe Secretary Lansing did not appear in reference to this bill.

Mr. Snook: Yes; Secretary Lansing, also.

Mr. Dewalt: Yes; he did appear in reference to this bill, as well as another one.

Mr. Moore of Pennsylvania: Then, it may be stated authoritatively that this is an administration measure.

Mr. Dewalt: That is possibly a definition which is subject to the ideas of the party who seeks to define. I would not call it an administration matter. I would call it a matter of general public interest which the administration desires for the public welfare.

Mr. Moore of Pennsylvania: There is just this about that, if the gentleman pleases: Many Members of Con-

gress on both sides of the political aisle are expected to stand by the President on these bills.

Mr. Dewalt: Yes.

Mr. Moore of Pennsylvania: I assume it would help the passage of this bill very much if it were known that the President approved it.

Mr. Dewalt: No better proof of that could be obtained than the fact that his Secretary of Commerce, his Secretary of State and a representative of his Attorney General all appeared in person and advocated the provisions of the bill. Of course, the bill as reported was changed somewhat from the bill as originally presented.

* * * * *

Mr. Steele: Is there anything in the provisions of this bill that would violate the treaty with Prussia of 1828?

Mr. Dewalt: Nothing. I am glad the gentleman referred to it, although it is rather out of the line of my sequence of argument; but the provision which the gentleman refers to is this:

If war should arise between the two contracting parties the merchants of either country then residing in the other shall be allowed to remain nine months to collect their debts and settle their affairs, and may depart freely, carrying off all their effects without molestation or hindrance.

Now, if the gentleman will observe, that Article 23 of this treaty has reference to whom? "The merchants of either country then residing in the other." Bearing in mind that specific definitive mark as to the contracting parties, namely, that they shall be merchants then residing in one or the other of the countries, and knowing also that this bill does not in any way affect the alien whether he be merchant or otherwise who is residing in this coun-

try, and that the description of the enemy is a local description, and that the enemy must be resident in the territory which is hostile or a territory of the allies hostile to this country, then you will clearly see that this provision does not in any way affect merchants resident in this country.

Mr. Steele: Will the gentleman permit another question?

Mr. Dewalt: Certainly.

Mr. Steele: In the discussion of this morning reference was made to some provision in this bill being confiscatory. The Hague convention of 1907, to which the United States and Germany were both signatory parties, provided against the confiscation of private property in the event of war between any parties to the convention.

Mr. Dewalt: Yes.

Mr. Steele: Are any of the provisions of this bill in violation of that convention?

Mr. Dewalt: Absolutely none, and I think it was in conformity with that idea that the proclamation of the President as early as last June was made reaffirming the doctrine that private property should not be confiscated and that the provisions of this bill were made as they are. If the gentleman has studied the bill, as I have no doubt he has, for I know his assiduity as a student and his carefulness as a lawyer, he will see clearly that instead of its being confiscatory in its nature it is in the nature of a requisition of property and a conservation of the property in the hands of the trustee, who is to hold it in escrow until the termination of the war, when this property is to be returned to the legal owner thereof subject to the equities existing between the parties.

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Mr. Dewalt: No property is forfeited.

Mr. Steele: The holding of the property by the public

agent is only for the benefit of the owner of the property.

Mr. Dewalt: Precisely so. Now, I will yield to the gentleman from Illinois.

Mr. Graham of Illinois: The gentleman read an extract from what treaty convention?

Mr. Dewalt: Article 23 of the Prussian treaty of 1799. The gentleman will find it on page 644 of the Senate Document, Volume 37.

Mr. Graham of Illinois: I am somewhat familiar with that. Does the gentleman contend that that treaty or any other treaty with Prussia is still in force?

Mr. Dewalt: I do not. I think they are all abrogated by the conduct of Germany. My position is very clear and emphatic on that.

Mr. Chandler of New York: Does the gentleman say that hostilities between nations abrogate treaties between the belligerents?

Mr. Dewalt: It does not necessarily. If the conduct of any belligerent at war with another party, with whom we are not at war, as against us, a neutral, having a treaty with one of the belligerents, is so outrageous as to make us declare the treaty abrogated, we should abrogate it at once.

Mr. Chandler of New York: We have declared that they are abrogated and repudiated them.

Mr. Dewalt: Certainly.

Mr. Rose: Will the gentleman yield?

Mr. Dewalt: I beg the gentleman's pardon, but I have only 10 minutes remaining and I have not time to yield. This power of the sovereign is so great that it oftentimes presents itself in the oddest of instances. Let me refer the committee to a very noted case, that of Mottley against the Nashville Railroad Company, and see how far the powers of Congress can go in reference to matters of that sort. It is found on page 480, Volume 219, United

States Reports, and I desire only to state the doctrine so as to enforce what I have already said in regard to the powers of the Government.

This is from the opinion of Justice Harlan:

In the Addyston Pipe case, this Court said that, under its power to regulate commerce, Congress "may enact such legislation as shall declare void and prohibit the performance of any contract between individuals or corporations where the natural and direct effect of such a contract will be, when carried out, to directly, and not as a mere incident to other and innocent purposes, regulate to any substantial extent interstate commerce."

Applying that in the same opinion, he said:

As in a state of civil society, property of a citizen or subject is ownership, subject to the lawful demands of the sovereign, so contracts must be understood as made in reference to the possible exercise of the rightful authority of the Government, and no obligation of a contract can extend to the defeat of legitimate Government authority.

This case was rather peculiar, and I desire to cite it for this particular purpose. Mottley was a passenger on the Louisville & Nashville Railway. He met with an accident. In consideration for his settlement of the case, they gave him an annual pass. After he had enjoyed the privileges of this annual pass for a number of years Congress passed an act by which it declared that no railway company could, under any circumstances, accept anything except money or the equivalent thereof for transportation. In other words, they forbade the giving of passes. Mottley had settled his case, and in consideration or part consideration he had received a pass. He asked for his pass

and they refused to grant him an extension of the same. He then brought mandamus proceedings in the Kentucky courts to enforce his rights. The Kentucky courts affirmed his rights and said that the railroad company must regrant the pass. The case was carried to the Supreme Court of the United States and, in this decision I have just read, Mr. Justice Harlan states this rule and lays it down flatly, that although the man was paid a consideration, namely, the settlement of his case with the railroad company, although he had enjoyed the rights of that pass for a number of years, yet when Congress passed an act declaring that he did not have the right to that pass, that the railroad company had no right to issue a pass, that was the end of the matter. And now I am coming to the point that the gentleman who has this bill in charge delegated me to speak upon, namely, what is the right of a patentee under the Government of the United States, because if he has a vested right for 17 years to the exclusive enjoyment of that privilege, then he has a property right, and under the decision in this Louisville & Nashville case that property right is always subject to what? It is subject to the sovereign power of the United States Government, which at any time, according to its necessities, may declare, first, that that right given to him, either exclusive or in part with others, can be declared void.

That being the law it follows as a matter of legal sequence that, as to patents issued by foreign countries enjoyed in this country or as to patents issued to residents of foreign countries by the United States, the sovereign power has the right to do what? It has the right to confiscate, if you please, that patent, it has the right to make sole use of that patent under this decision, and the right to declare that the foreign patentee who obtained his patent in the United States can no longer use the same in any regard and obtain no profits or emoluments there-

from; but this bill does not go so far as that. This bill says this: That where the patentee is a foreigner he shall have his rights suspended during the war unless he receives a license from the Government to go on with his patents. The bill goes further than that. The bill goes so far as to say that if the patentee be a foreigner and has obtained a patent in the United States, that then any citizen of the United States may apply to the United States Government and obtain from the Federal Trade Commission a license to operate under that patent; but in consideration of so operating the sublicensee, I shall call him, or the subpatentee, must do what? He must pay 5 per cent. of what? First, 5 per cent. of the gross receipts if that is demanded. If, however, that is not demanded, or if it is thought that that is not commensurate with the value of the patent, then he has to pay 5 per cent. of the value use of that patent as determined by the Federal Trade Commission. This 5 per cent. is to be paid to the Treasury of the United States and it is to remain there during the continuance of hostilities, and upon the declaration of peace then what happens? Then the original patentee has the right to demand of the subpatentee that he be reimbursed, and he gets his reimbursement from this 5 per cent., or if not from the 5 per cent. thus deposited, he gets his reimbursement from the 5 per cent. of the gross value of the use of the patent. This I make as clear as I can in order to inform my friend, Mr. LaGuardia, in order that he may know perhaps more definitely the rights of the patentee and the licensee.

Mr. LaGuardia: I thank the gentleman, but I do not agree with his law.

Mr. Dewalt: It may be that the gentleman does not agree with it, but after all it is conservation of the property. He has received a license from the United States,

and that property should be used by the granting power if it becomes necessary during a state of war.

Mr. LaGuardia: I do not agree with the analogy drawn by the gentleman from the Mottley case.

Mr. Dewalt: Reasoning by analogy is always dangerous, particularly when the other fellow does it.

Mr. McKeown: Is it not a fact that Russia has already confiscated German patent rights?

Mr. Dewalt: Russia is the only belligerent country that has done that. The rest of the countries have still observed the amenities of the situation, and have not forfeited the patents. This is not a new theory as to patent rights, and it is not a new theory as to confiscation, as some have it, of property. We call it a requisition of property, a conservation of property. During the Civil War this same thing was done in regard to property, and by reading the report of Governor Montague, or rather the testimony in regard to this matter when pending before the committee, the gentlemen of this committee will find a long list of cases, all of which reaffirm and clearly establish the right of the Government even if confiscation is necessary or the granting of licenses for the permission of doing business. Now, I have as clearly as I possibly could explained what I believe to be the vital and pivotal points in regard to this matter of licensing under the rights of the original patentee. However, there is one thing that should be remembered as well. After the subpatentee, as I call him, gets a privilege from the Government, the Government does not give him by this act an unrestricted privilege, but still holds a check upon the valuable right which it has given to the original patentee, and gives to this subpatent or license a right under the original patent, for how long? "We will give it to you for such time as we deem proper, and, more,

we will give it to you for such time as you obey the regulations which we enforce from time to time"; and to make it liberal so that no man will lose by going into the venture, they say this: "If in the meantime you invest large sums of money for the establishment of plants or other means of production, then you shall be granted a license to operate under this patent during the lifetime of the patent, or so long as we find that it is necessary to remunerate you and to recompense you the outlay you have made."

Now, the value of this matter is very clear. There are millions and millions of dollars' worth of remuneration annually coming from the use of these patents that are held by foreign patentees. Resuming the argument, then, gentlemen, this is a privilege given by a sovereign power, given for a period of 17 years, and if that sovereign power has the right to revoke and annul that privilege at any time, it may do that according to the necessities of the Government in a state of war; then it follows, as a matter of clear reasoning, that if it has the power to annul it has also the power to restrict, and if it has the power to restrict, then it has the power to grant a sublicense, and if it has the power to grant a sublicense it has the right to define the terms upon which those sublicenses shall be granted; and then the United States Government steps in and says, "We grant this license, this subpatent, to a citizen of the United States." And then he must do what? He must pay a license fee of \$100 as provided by the act, and must also pay the sum of 5 per cent., as above stated, of the gross receipts for the use of the patent, or 5 per cent. of the value of the use of the patent as determined by the Federal Trade Commission. At the end of the war the alien who has a patent right originally from the Government is recouped, and how does he get it? He gets it from the United States Government, which is holding in

escrow this 5 per cent. from the gross receipts, or 5 per cent. of the value of the patent.

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(Congressional Record, July 9, 1917, Page 5334.)

The title of the bill now under consideration is "To define, regulate, and punish trading with the enemy, and for other purposes." This advises us that it is a war measure.

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Mr. Moore of Pennsylvania: Secretary Redfield, having originated the movement, conferred with his colleagues in the Cabinet, and some of them appeared before the committee. But what I am interested in knowing, and what some of my colleagues are interested in knowing, is whether the President is interested in this?

Mr. Snook: Doubtless he is.

Mr. Moore of Pennsylvania: So it may be regarded as an administration measure?

Mr. Snook: I cannot say at to that. The gentleman can put it that way if he likes.

Mr. Moore of Pennsylvania. If the gentleman pleases, it is a serious question. The people are asked to support the President in the prosecution of this war.

Mr. Snook: I understand the gentleman's position.

Mr. Moore of Pennsylvania: And it may be that a great deal of the legislation that we are passing is not what the President wants and feels is necessary for the prosecution of the war.

Mr. Snook: I have no doubt he feels that this is necessary.

Mr. Moore of Pennsylvania: I wanted to get the gentleman's view. That is his opinion.

Mr. Snook: The courts of all the civilized countries hold it to be the law that war suspends all commercial in-

tercourse between the citizens of two belligerent countries or States, except so far as may be allowed by sovereign authority.

In time of war, therefore, some such law as the one under consideration becomes a necessity. The rule of law to which I have referred is announced by the Supreme Court of the United States in the case of *United States v. Lane* (8 Wall., p. 195) in the following language:

At the time this contract purports to have been made this country was engaged in war with a formidable enemy, and by a universally recognized principle of public law commercial intercourse between States at war with each other is interdicted. It needs no special declaration on the part of the sovereign to accomplish this result, for it follows from the very nature of war that trading between belligerents should cease. If commercial intercourse were allowable it would sometimes be used as a color for intercourse of an entirely different character, and in such case the mischievous consequences that would ensue can be readily foreseen. But the rigidity of this rule can be relaxed by the sovereign, and the laws of war so far suspended as to permit trade with the enemy. Each State settles for itself its own policy and determines whether its true interests are better promoted by granting or withholding licenses to trade with the enemy.

There seems to be but one exception to this rule; this exception is explained by the Supreme Court in the case of *Insurance Co. against Davis*, in *Ninety-fifth United States*, page 425, where that court announces the rule laid down in the *Lane* case and then explains the exception in the following language:

The only exception to the rule recognized in the

books, if we lay out of view contracts for ransom and other matters of absolute necessity, is that of allowing the payment of debts to an agent of an alien enemy where such agent resides in the same State with the debtor. But this indulgence is subject to restrictions. In the first place, it must not be done with the view of transmitting the funds to the principal during the continuance of the war, though, if so transmitted without the debtor's connivance, he will not be responsible for it. (Washington, J., in *Conn. v. Penn.* Pet. C. Ct., 496; *Buchanan v. Curry*, 19 Johns. (N. Y.), 141.) In the next place, in order to the subsistence of the agency during the war, it must have the assent of the parties thereto—the principal and the agent. As war suspends all intercourse between them, preventing any instructions, supervision, or knowledge of what takes place on the one part and any report or application for advice on the other, this relation necessarily ceases on the breaking out of hostilities, even for the limited purpose before mentioned, unless continued by the mutual assent of the parties. It is not compulsory, nor can it be made so on either side to subserve the ends of third parties. If the agent continues to act as such, and his so acting is subsequently ratified by the principal, or if the principal's assent is evinced by any other circumstances, then third parties may safely pay money for the use of the principal into the agent's hands, but not otherwise. It is not enough that there was an agency prior to the war. It would be contrary to reason that a man, without his consent, should continue to be bound by the acts of one whose relations to him have undergone such a fundamental alteration as that produced by a war between the

two countries to which they respectively belong, with whom he can have no correspondence, to whom he can communicate no instructions, and over whom he can exercise no control. It would be equally unreasonable that the agent should be compelled to continue in the service of one whom the law of nations declares to be his public enemy.

Before analyzing the provisions of the bill I might say that this exception is recognized, and situations growing out of facts such as are discussed in this exception are provided for in the proviso found on the bottom of page 9 and top of page 10 of the bill.

Inasmuch as under the law as stated in the cases from which I have quoted practically no commercial intercourse can be carried on between two citizens of belligerent countries or States except so far as allowed by the sovereign authority, it follows that it becomes necessary to have some exercise of that authority. This is attempted to be done by this bill, as it attempts to define what things a law-abiding citizen may do and what he may not do in regard to his commercial intercourse with an enemy, and what disposition he may make of the property of an enemy that may come into his hands or under his control.

Exercising the sovereign authority to make clear just what a citizen may do, what he may not do, and what he should do the bill defines certain terms and lays down certain rules which I shall undertake to analyze as briefly as possible.

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As my colleague from Pennsylvania [Mr. Dewalt] just said, this is no new provision as to issuing a license under which trade may be had. In the case to which the committee's attention has been called, the Lane case, decided by the Supreme Court of the United States, you will find

there is a review of all the acts of this kind that were in effect during the Civil War and an exposition of the law regarding them. And so it is an application of an old principle that was in effect during the Civil War—this providing for a license for trading with the enemy.

Mr. McKeown: Is there any provision in this bill that will cover a case like this: Suppose horses in Oklahoma have been sold to Austrian agents or German agents, to be delivered in New York, and a contract made and an agreement made before the declaration of war, and the horses are delivered in New York after the declaration of war, but have not been delivered to the enemy, in that case what provision is there, if any, to take care of the owners or the men who have sold this property?

Mr. Snook: I am afraid there is no provision in the bill to take care of such a thing as that, and I do not know that there ought to be a provision of that kind, because I really think we ought not to send horses or property of that kind to the enemy to help them in this war in which we are engaged against them. I do not see how you can make a provision of that kind. It is one of the risks of war that they will have to assume.

Mr. McKeown: Then, those people in Oklahoma in that case will have no redress in the courts under this bill?

Mr. Snook: I think not. Under Section 5 of the bill the President may suspend the act so far as it applies to an ally of the enemy. This is a provision that the department thought to be wise, because at some time it might be necessary in the course of trading for the President to suspend it.

This provision further provides that licenses may be granted under the direction of the President to any person if he be of opinion that such license is advisable. This

is the provision of the bill that allows the President to grant licenses to alien citizens who may be residents of the United States, so that that matter may be taken care of if he thinks that some person is transgressing the law or is pursuing some kind of trade to the detriment of this country.

As to the provisions of section 6, I only want to say this: It seems to be the opinion of some Members of the House that this bill provides for the confiscation of the property that is to be turned into the hands of this custodian. On the other hand, it is the opinion of the committee and of the people who framed this bill that that will not be the result if this bill is enacted into law. Indeed, it is the opinion of the committee and of the people who framed the law that it will take care of that property, so that it will be in readiness to be disposed of at the end of the war according to an act of Congress.

Mr. Stafford: Mr. Chairman, will the gentleman yield?

Mr. Snook: Yes.

Mr. Stafford: What provision is there in the bill that at the close of the war the property of those enemy foreigners who have seen fit to allow their property to be invested in this country is to be returned to them?

Mr. Snook: The provision in the bill is that that is to be disposed of in the discretion of Congress.

Mr. Stafford: Well, if Congress does not act, then their property is withheld from them and confiscated by the Government.

Mr. Snook: Does the gentleman think that Congress will assume that position? Has the gentleman so little confidence in the Congress of the United States as to think it will not act fairly and justly with those men?

Mr. Stafford: Oh, it is not a question of acting fairly, but a question of Congress not acting expeditiously—a

question of how long the property of these foreigners will be withheld.

Mr. Snook: The thing is not one-sided, the gentleman should know. There will be so many things to adjust when this war is over. The enemy will have property of our citizens. There will be claims for indemnity, and the German Government will undoubtedly have property belonging to our citizens. And it seemed wise to the committee, although it may not seem wise to the gentleman, that this property should be left in the position it is in, so that when all these questions are taken up they can be adjusted equitably.

Mr. Stafford: The gentleman is confusing in the statement he has made the rights of the belligerent government with the rights of individual subjects. It is not sought by this bill to appropriate the property of foreigners who are domiciled in this country. That remains in the hands of those aliens who are domiciled here, but you are attempting to take the property of foreigners resident abroad who have seen fit to leave their property for investment perhaps with a corporation or some individual, or turn it over to the Government without any right whatever, so far as the provisions of the bill are concerned, to require the Government to turn it over to them after the end of the war.

Mr. Snook: This property is taken and placed in the hands of the custodian under the powers of Congress. Congress passes the law under which it is done, and I do not see why Congress could not be trusted to pass a law governing the matter when the war is over; why it should not be trusted to adjust this matter and see to it that the property is returned to the owner. I am sure there is no disposition on the part of the Congress to confiscate any property.

Mr. Stafford: Does the gentleman know of any treaty

at the close of any war where the conditions have been to take the property of subjects resident abroad and adjust those claims? They are always exempt. It is only the property of the government itself that is taken into consideration.

Mr. Snook: I would remind the gentleman of this fact, that when the war is over Germany may have enacted a law similar to this, under which the property of our citizens will be held in Germany. Does the gentleman think that, without regard to the way they have treated our citizens, we should turn this property over to them?

Mr. Stafford: While the Government has the right to take the property of an alien living in its jurisdiction, no government has in recent times gone to that extent, and all authorities on international law recognize the fact that individual property should not be taken during a state of belligerency.

Mr. Snook: I understand that; but this proposition is not only—as the gentleman will see if he examines it closely—for the benefit of our Government, but is also for the benefit of the foreigners who own this property, because in all cases the property will not be, as the gentleman from Connecticut [Mr. Hill] pointed out, held by corporations which are as solvent as the Pennsylvania Railroad. This property, if it must be kept in the hands of the debtors, may be lost; but if it is put into the hands of the United States it will be saved.

Mr. Stafford: If the gentleman will permit right there, I have in mind a case where an alien enemy, formerly a governess in the home of a constituent of mine, left property in this country in his hands to take care of. She exercised her judgment as to who should be her debtor. Now, you enact this bill and take away her right of recovery—of suing her agent or trustee for her property.

Mr. Snook: Well, that is the gentlemen's view of the matter.

Mr. Stafford: That is the bill itself.

Mr. Snook: I think the property would be just as much safeguarded and all rights as well protected if it is left to Congress to dispose of after the war as it would be to give the party a right to bring a suit in the Court of Claims.

Mr. Gordon: Will the gentleman yield?

Mr. Snook: Yes.

Mr. Gordon: If the custodian of the money of this government that the gentleman speaks about were to send it to her, and when it got across the sea it were to get into the hands of one of the governments at war with Germany, they would take it and keep it?

Mr. Snook: Yes.

Mr. Gordon: And use it against Germany?

Mr. Snook: Certainly. Alien enemies have no legal rights that a belligerent is bound to respect, as a matter of law.

Mr. Stafford: But this Government does recognize them.

Mr. Gordon: We are recognizing them in this country by providing in this act for a trustee to hold the property until the close of the war.

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Section 15, page 22, provides punishment and penalty for the violation of the act. And Section 16, pages 22 and 23, confers jurisdiction upon the district courts of the United States to issue such process as may be necessary to enforce the provisions of the act, with the right of appeal as provided in Sections 128 and 238 of the act of March 3, 1911, entitled "An act to codify, revise and amend the laws relating to the judiciary." Jurisdiction of offenses against the act committed in the Philippine

Islands and the Canal Zone is given to the several courts of the first instance in the Philippine Islands and the district court of the Canal Zone, and concurrent jurisdiction for like offenses is conferred upon the district courts of the United States for offenses against the act committed upon the high seas.

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Mr. Snook: It will be noted in this connection that trade with aliens who reside in the United States is to be forbidden, only by proclamation of the President, and then only "if he shall find that the safety of the United States or the successful prosecution of the war shall so require." The bill is drafted in this way to permit as little interference with our domestic affairs as possible.

While we are passing so many laws for the regulation of our trade and commerce, it is also highly important to keep in mind that we now have in this country the greatest source of credit in the world, and that if we hope to win the war it is necessary to maintain that credit.

War cannot be carried on successfully in these times without credit. In the long run credit will probably be the deciding factor in this great struggle. So while regulation in certain cases is absolutely necessary, it is also important that both our domestic and foreign commerce be just as free as it is possible to keep it without impairing our efficiency or giving aid and comfort to our enemy.

The first object of the bill, therefore, is to provide such regulations as will prevent anything from this country reaching the enemy that might prove of value to it in carrying on the war. Another object of the legislation which is worked out through the alien-enemy custodian is to protect the rights and property of enemies and allies of enemies.

It is perfectly apparent that such persons are the owners of valuable property situate in the United States; that they are parties to contracts entered into prior to the beginning of the war which have not yet been carried out, and that there are millions of dollars now due to such persons from Americans and American business concerns; and that there will be, before the close of the war, many more millions due them from dividends on stocks in American business concerns and from interest on American securities.

The law as it now stands prevents the turning over of this property, the carrying out of these contracts, and the payment of such interest and dividends.

It would be neither right nor moral to confiscate the property of these persons because they happen to reside in a country with which we are at war. A study of these facts show that a law like this, providing for the safe-keeping of such property by a custodian, is both just and proper.

The Secretary of Commerce, in the hearings before the committee, stated the case in this way:

The creation of an alien-property custodian is a novelty and is in line with that same effort toward equity which impels us to indicate an earnest desire to show to the people with whom, unfortunately, we are engaged in war that here is the opposite of confiscation and here is the opposite of requisition. A responsible officer of the Government is created who shall receive the property of an enemy and put it in the safest place known to us—that is, in the Treasury of the United States—and invest it in Government bonds, so that the property of the enemy in our country shall be used to support the war, but at the same time to remain

safely in the custody of the Treasury, and to remain there until the war is over. Then this bill does not give to that custodian the final disposition of that property, but it expressly declares that after the war shall have ceased the property thus secured shall be at the disposition of Congress and that it shall be for Congress to say how it shall be handled. It is evident to you, sir, I am sure, what a remarkable power the possession of that enemy property thus safeguarded would be to you if you were negotiating terms of peace. I hardly need do more than to suggest the weight that this would give your words, and also as being an act of good faith even toward an enemy.

Then, too, you can readily see in what an embarrassing position our own people are placed on account of the rule of law to which I called your attention. Many of our people hold property which belongs to an enemy; many others have entered into contracts before the war with persons who are now our enemies; still others have money which belong to such persons.

Almost daily these persons are asking the Department of Justice for advice; they wish to know what to do. The adoption of this measure will relieve the embarrassing position in which they are placed; all property held by our citizens belonging to an enemy or to an ally of an enemy may be turned over to the custodian and all money in which an enemy or an ally of an enemy has any interest may be paid to the custodian and the holder relieved of further liability, and everyone will be assured that this money and property will be safely held and equitably and justly disposed of.

The necessity for this law, then, grows out of the fact that all this money and property of the enemy held by

the people of this country cannot, under the present state of the law, be turned over to the foreign enemy in any way and cannot be used by the enemy as a basis of credit nor for his benefit.

Therefore unless the law is changed all this money and property must remain in the hands of the present holders, and no one can receive any benefit therefrom except such people as hold it for the owners.

The theory of the bill is that it shall not be allowed to remain in the hands of the debtor or the holder, but that it shall be turned over to the custodian, to be held by him during the war and to be invested in Government securities, thereby helping to finance our Government and to build up its credit.

Thus this feature of the bill provides a means for assisting the Government, but at the same time is just and fair to the enemy.

For if the war is to last very long and a measure of this kind is not passed, the enemy will be bound to take the risk of the solvency of his debtor in America. In times of peace, in the ordinary course of business, the risk of insolvency is quite great. This risk may be increased in times of war. This bill does away with that risk. It absolutely affords a means by which all this property and money will be taken care of and invested in the highest securities, so that when the war is ended the owner may make and prosecute a claim for his property.

At the same time the bill safeguards and protects the rights of the Government, for the whole question as to the final disposition of this property and money, together with the income thereof, is left to the discretion of Congress and is to be settled by appropriate legislation when the war is over.

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Mr. Esch: Mr. Chairman, it is not my purpose to go

into an elaborate discussion of the details of this bill. The details have already been gone over with sufficient fullness, but there are a few features in connection with the bill that have not been adverted to in the course of the discussion, and as to them I wish to call particular attention. The discussion thus far impresses me with the necessity of amending the bill along the lines suggested by my colleague, the gentleman from Wisconsin [Mr. Lenroot], and also with the necessity for some amendments protecting payments in cases of bankruptcy proceedings, and no doubt amendments for these purposes will be offered in due course.

The purpose of the bill is to modify the severity of the law of the courts and of international law in time of war, to mitigate the severity of the law in time of war, as was well said by the gentleman from Virginia [Mr. Montague], and to see to it that business in the United States is interfered with as little as possible during the pendency of the present strife. This bill does not seek to affect enemies or allies of enemies resident in the United States, with this qualification—that is the President, in his judgment, believes the safety of the Government or the successful prosecution of the war requires it he may by proclamation cover them into the “enemy” class, and they will then become subject to all the other provisions of the bill relating to enemies. It is the purpose to interfere with business as little as possible.

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Mr. Hulbert: Will the gentleman yield right there for a brief question?

Mr. Esch: For a brief question.

Mr. Hulbert: What is intended to be done, so far as this bill is concerned, in relation to a company doing business wholly in this country, not with aliens but wholly

in this country, where the stock of the corporation is owned wholly by citizens of the German Empire?

Mr. Esch: I suppose the gentleman is referring possibly to an insurance company?

Mr. Hulbert: No; I have reference to a commercial company.

Mr. Esch: Well, there are such. They are aliens and enemies under this bill, because corporations are not given the same rights and privileges as individuals or associations or a body of individuals, and the reason for it is this: A foreign corporation made up of German stockholders doing business in the United States and doing business wholly with citizens of the United States is nevertheless under the control of Germany, because such corporation is a creature of the laws of Germany. That does not obtain as to the alien enemy resident in the United States. He is not subject to the laws of Germany.

Mr. Hulbert: I think the gentleman misinterprets my question.

Mr. Esch: Possibly.

Mr. Hulbert: For instance, I know a number of concerns in New York City which, before the war broke out, were acting in this country as purchasing agents for German concerns. Those concerns were organized under the laws of the State of New York. Two-thirds of the incorporators had to be citizens of the State, it is true, but a majority of the stock was owned by German citizens.

After the declaration of war between Germany and England some of those corporations, in order to continue their existence, suspended that part of their activities where they acted as purchasing agents or for the shipment of materials over there and entered into direct competition here with local concerns, because everybody connected with those companies were American citizens ex-

cept as to the control of stock. Now, is it the purpose of this bill that those companies shall continue in existence and that their profits will be trustee'd, or is it the intention under this bill absolutely to suspend its business and shut them off from all trade with the people here?

Mr. Esch: Are those American corporations?

Mr. Hulbert: They are organized under the laws of the several States.

Mr. Esch: And incorporated under the laws of the several States?

Mr. Hulbert: Certainly; and the stock is owned by German citizens.

Mr. Esch: Then they will be permitted to do business in the United States, but the officers of those corporations, the president, the secretary, and trustees, will be required under this bill to report to the alien-property custodian the name of every German stockholder or bondholder, as the case may be, and when that is listed with the custodian, then the dividends on the stock or the interest on the bonds will be paid to the custodian or to a depository, and put in the Treasury of the United States to be invested by the Secretary of the Treasury in bonds or in certificates of indebtedness. It will not mean that that corporation will cease business. It can apply for a license.

Mr. Hulbert: Now, will the gentleman allow one further question along the same line? What will be the course pursued in relation to a copartnership of German citizenship which is operating in this country through a power of attorney in which the power is vested in an American manager, an American citizen?

Mr. Esch: The copartners are German?

Mr. Hulbert: Yes, sir.

Mr. Esch: They are not residents of the United States?

Mr. Hulbert: No.

Mr. Esch: Then they are aliens and enemies within the purview of this bill.

Mr. Hulbert: Yes.

Mr. Montague: And of international law.

Mr. Hulbert: Does this bill give any additional right to those men beyond existing international law?

Mr. Esch: No; I do not think it gives any more right.

Mr. Hulbert: If they try to carry on business, will this bill step in—

Mr. Esch: They could make their application for a license to continue business, and all assets or profits and so on would have to be accounted for to the alien-property custodian or to some other person designated by the President.

Mr. Hill: If the gentleman will pardon me, I think the committee has struck a great deal bigger problem than they have provided for. There are literally millions of such investments of European countries in this country, not only stocks and bonds of railroads, and so forth, but in corporations and in partnerships, and it seems to me that the honor and good faith of the United States would seem to require that it should be explicitly provided. I have this suggestion to make to the gentleman if he will be kind enough to allow it. If the gentleman will turn to Section 11 of the bill, what earthly objection can there be to inserting something of this kind:

That all moneys paid to or received by the alien-property custodian pursuant to this act—

Now, understand I do not object to the purpose of the bill, but I am in favor of it. However, I want to do it squarely, openly, and above board—

shall be deposited forthwith in the Treasury of the United States and held in trust for the original owners.

And at the top of page 21, at the end of the word "Treasury":

To the credit of the individual owners.

Then turn over to page 22, and in line 17 insert, and I will note the words in a minute:

After the end of the war any claim of any enemy or of an ally of enemy to any money or other property received and held by the alien-property custodian or deposited in the United States Treasury shall—

And I add the words—

on proof of ownership be paid as Congress shall direct.

Now, what harm is there in that? It would absolutely remove all possibility of a claim of confiscation of private property.

Mr. Esch: I cannot conceive it is a case of confiscation, although the gentleman seems to believe that it is.

Mr. Hill: Let me ask the gentleman this question: How long do you suppose that a corporation such as the gentleman from New York [Mr. Hulbert] has suggested would continue to do business if they knew the entire profits, dividends, and proceeds of any kind or character whatever were to be turned into the United States Treasury in an indistinguishable fund and disposition of them should be left until after the war was over, and after an act of Congress provided for their disposition?

Mr. Hulbert: I would like to say to the gentleman in that connection that there are thousands of people in New York City—American citizens—who are employed by such concerns, and who, if those concerns were put out of business, would be thrown out of work, and starvation and deprivation would be brought to their front doorstep.

Mr. Hill: Of course. And I want to say to the gentleman that New York City is the second largest German city in the world, next to Berlin, and this is going to raise complications that ought to be carefully considered. I am in favor of doing it, but let us do it so that there will be no mistake about it when the war is over.

Mr. Esch: I do not want to pass on the amendments of the gentleman from Connecticut, because I have not had opportunity to consider them, for this is the first time I have heard them suggested, but I would be glad to consider them when they appear in the Record in the morning.

I wish to conserve these rights, and I wish to see that there is assurance that there will be a payment made at the conclusion of the war.

Mr. Hill: I will say to the gentleman that I have looked in vain through the bill to find any reference whatever to the holder of United States Government bonds in Germany. There is a case where the Government has a right to step in and provide definitely what shall be done, but the other cases to which I referred are cases between individual citizens of the two countries.

Mr. Esch: This bill by its terms put bankers, merchants, manufacturers and all other citizens upon notice. In other words, they will know after it is enacted that they cannot deal with an alien enemy without risk or hazard. They will know there is now an official, if this bill becomes a law, to whom they can apply in case of doubt and get authority by means of a license to continue the conduct of their business. In this way this bill will bring relief to commerce, will clarify the atmosphere, and will remove the last vestige of doubt.

There are many in the United States who, knowing that they are indebted to an enemy or an ally of an enemy, and desiring to be relieved from such obligation, can make

payment into the hands of this Government official, the custodian, and receive from him the necessary quittance. This quittance will be protanto, based on the amount so paid, and the receipt which will be given by the custodian or by a depository, or such other person as the President may designate, will be evidence in any court of such payment.

The money or property when turned over to the custodian becomes absolutely safe. In the ordinary course of business the creditor runs the risk of his debtor's malfeasance, of his conversion of the property, of his sudden death or bankruptcy. All these risks the creditor runs in ordinary course of business, but under this bill this money—these obligations—can be paid, evidenced by a proper receipt, and no further risks will be suffered by the creditor because of the death, bankruptcy, malfeasance, or criminal conduct of such debtor. The creditor will feel secure in the knowledge that his money is in the safest place in the world—the Treasury of the United States.

* * * * *

(Congressional Record, July 20, 1917, Page 5389.)

Mr. Parker of New Jersey: Mr. Chairman, this is the essence of the bill. This bill has two effects: One is to relieve the rules of international law with reference, we will say, to German citizens living in the United States who will mind their own business and do business here and do not try to do business with Germany. Under the old international law they could to a certain extent do business, but they could not collect a debt. They were aliens, foreigners, enemies. We want to say to them that as long as they behave themselves with Americans they are friends, unless the President names them under a subsequent part of the bill and tells them that they will have

to be put under special guard. The other side of this bill is just as strong.

Business now is world-wide, and we have come to a war, and we want to stop trading, not only with anyone in Germany, but we also want to say to any business man throughout the world, "You can trade with Germany or with us, but you cannot trade with both; if you do business in Germany, we will not do business with you." It is, in effect, the "We do not patronize," which we have heard so much of, which may be a boycott or a blacklist, a thing which must be abolished in time of peace, but in time of war has been found to be absolutely necessary. We do not want to send funds or allow Americans to send funds to firms that have German connections, and who may see that those funds get into Germany, whether those transactions be conducted in Holland, South America or in any other neutral country. We are forced to say, as England has said, "We will not do business or allow our subjects to do business with persons who are likely to deal with Germany." Therefore this bill says that the term "enemy" shall include persons outside of the United States who do business in Germany. It is a strong statement.

I have proposed two amendments to that, as you will notice. They are separate amendments, but I think both are necessary. The words "outside the United States and" should be stricken out. A man in this country who is doing business with Germany ought to be boycotted, if you choose to so put it, and put out of business, just as much as a man outside, or more. If a man in this country is doing business with Germany, American citizens should not do business with him, because he comes under the list of those with whom we should not do business just as much as does the man in Holland or in Sweden who is doing business with Germany. American citizens

ought not to do business with anyone in or outside of the country who is doing business with Germany. On the other hand, the first amendment that I propose is very necessary. We say rightly that we will not trade with men who trade with Germany, but we ought not to call such a man an enemy. That is a strong term. He is an enemy only for the purposes of such trading and under this act. This is an act to limit trading with the enemy; it says that we will not trade with a man who does business with Germany, and that for the purposes of this act he shall be regarded as an enemy; but it should not say that an honest man who happens to have German connections, if he live abroad in a neutral country, is an enemy and should be defined for all purposes as an enemy.

And I therefore suggest that my first amendment, the definition of the word "enemy," should be limited by the words "for the purpose of such trading and of this act"; and I suggest, in the second place, that there should be no requirement that a man who trades with Germany should live abroad. It is a great deal worse if he lives here. Anyone who does business with Germany should be barred to the trade of the United States in time of war.

This gives me an opportunity to speak of the suggestion made by the gentleman from Wisconsin [Mr. Lenroot], that we should only bar such a man so far as trade with Germany is concerned. That will not meet the question. If we are sending wheat, we will say, to Holland, we do not want to send it to any man who is doing business in Germany. He may or will not send the wheat or its proceeds to Germany, and, therefore, we do not want to have the bill restricted to his trade with Germany. That would make it necessary to find out where he is going to send the wheat. The point is to stop shipment of

wheat to anyone who is in business with Germany or an ally of Germany, and it ought to be so limited.

* * * * *

Mr. Mann: Well, here, to begin with, is a German subject of the United States declared to be an alien enemy. He cannot buy groceries, he cannot pay a street car fare, he cannot deal with anything that is property, he cannot go into a restaurant or a hotel.

Mr. Dewalt: Will the gentleman allow an interruption?

Mr. Mann: Certainly. I am trying to get information.

Mr. Dewalt: I think the gentleman misapprehends the scope of the bill.

Mr. Mann: Perhaps: I have only read it; that is all. I may not know what it means.

Mr. Dewalt: The alien enemy, such as the gentleman terms him, is not the party who has a residence in the United States.

Mr. Mann: That depends. We are discussing a proposition now that does make the party in the United States an alien enemy. That is the very paragraph now under consideration. It gives the President the power to declare any German citizen living in the United States an alien enemy, and then says if he is an alien enemy you cannot pay him any money, you cannot trade with him, you cannot exchange or transmit any property with him, you cannot deal with him for any property, you cannot sell him a bill of groceries, you cannot sell him a dinner at a hotel.

Now, that goes a good ways. But then here is a proposition that authorizes the President to declare an alien enemy a naturalized American citizen born in Germany, and then undertakes to say that, though he is an Ameri-

can citizen, you cannot sell him property, he cannot sell his property.

I know we have forgotten that there is a Constitution of the United States, but the departments have gone crazy in reference to these matters. They see a German spy on every housetop and on every street corner, and they are afraid of the spies. They are scared stiff, and no occasion for it. We are in war. We have got to carry on the war remorselessly. But that is no reason why we should all get scared to death at home.

By what authority do we propose to say that some Member of this Congress, born in Germany, naturalized as an American citizen, cannot draw his pay from the Sergeant at Arms, cannot rent a house, cannot live, must die—must starve to death—on the street; he cannot even do that in a bed?

Now, the gentleman says that will not be done. Then what is the purpose of putting the provision in authorizing it to be done if you do not intend to do it? Why offend every sense of decency and propriety by stating that we give to the President the power to take away the right of every naturalized citizen of the United States who happens to be born in a country at war with us? I do not think that we ought to say, even as to German citizens in the United States whom it may be desirable to place under some kind of ban, that they cannot trade in order to live. It is ridiculousness gone mad.

Mr. Rogers: Mr. Chairman, I move to strike out the word "natives," in line 19, page 24.

The Chairman: The gentleman from Massachusetts offers an amendment, which the Clerk will report.

The Clerk read as follows:

Amendment offered by Mr. Rogers: Page 24, line 19, strike out the word "natives."

Mr. Miller of Minnesota: That should also include the comma following the word "natives."

Mr. Rogers: Yes.

Mr. Dewalt: Mr. Chairman, the gentleman from Illinois [Mr. Mann], who is always emphatic and always pungent in his remarks, has been equally emphatic and pungent in regard to this word "natives," in Subsection (c), on page 24. The emphasis of his remarks goes so far as to say that any native of a foreign country, although that native might be a naturalized citizen of the United States, would be prohibited by the terms of this act from obtaining either food or shelter or substance of any kind if the President of the United States by proclamation should declare that he should be thus deprived.

Now, that is the basic proposition, and I take it as a proposition which is well founded in reason under the emergencies of the case. Why should not a native of a foreign country, although he may be naturalized, be subject to the provisions of this act if he makes himself subject to it by saying or doing anything which militates against the successful prosecution of the war?

Mr. Miller of Minnesota: Mr. Chairman, will the gentleman yield?

Mr. Dewalt: Yes.

Mr. Miller of Minnesota: The gentleman evidently contemplates each individual standing on his own feet. That paragraph, however, authorizes the President to name a whole class of citizens—a body of citizens—not one—not, Tom, Dick, and Harry, but a whole class together, and make them alien enemies.

Mr. Dewalt: Yes.

Mr. Miller of Minnesota: Now, let us take Mr. A, who is a native of Germany but a naturalized citizen of the United States. He is as innocent and loyal to the flag as any man that ever lived.

Mr. Dewalt: I grant you that.

Mr. Miller of Minnesota: Likewise he has ten thousand brothers of the same kind. There may be others. There is nothing here to prevent the President from saying that all that are born in Germany and naturalized citizens of the United States are alien enemies. Now, the gentleman can surely see that that is not proper if it can be avoided.

Mr. Dewalt: I understand that, and I understand it very well.

Mr. Miller of Minnesota: How is any strength given to the bill, or how is the bill strengthened by including the word "natives" in there?

Mr. Dewalt: If the gentleman permits me for a moment to refer him to the first three words in this subsection, he will see that it contains this clause, "such other individuals."

Mr. Miller of Minnesota: Just read the next two or three phrases.

Mr. Dewalt: Yes; I understand. I will. The President of the United States might select you, if you please, if you were a native of a foreign country, as an individual, and by special proclamation declare that you should not have any of the rights that otherwise you would have; or he might say that you in connection with others, constituting a body of individuals, should be thus deprived. But you go to the extremity of asserting and declaring that the President by his proclamation would, of his own volition and act, include everybody of a class to which German citizens or Turkish citizens or Austrian citizens might belong. Now, if there be such a class, and if it could be determined by reasonable proof that they were militating against the successful operation of the war, I care not whether they be a class or whether they be individuals, I maintain that they should be subject to these provisions. And whether they are deprived of food or sustenance,

whether, as the gentleman from Illinois [Mr. Mann] says, they could not get a bed to sleep in, or whether they could not buy a street car ticket, or buy a meal at a restaurant, any individual who puts himself up against the Government of the United States in this emergency, whether he be born in a foreign country, naturalized here, or whether he be a citizen or subject of that foreign country, he ought to be subject to the provisions of this act.

Mr. Gard: Will the gentleman yield?

Mr. Dewalt: I yield to the gentleman from Ohio.

Mr. Gard: I should like to ask the gentleman to explain to me the the meaning of the word "class" that has just been adopted.

Mr. Dewalt: I myself do not know just exactly why the words "or class" were put in, or at whose instigation they were put in. They were offered by Governor Montague just a few moments ago.

Mr. Miller of Minnesota: I am sure the gentleman knows as much about the meaning of the word "class" as any Member of the House. I apprehend the real purpose of his inquiry is to draw a conclusion. A class means a class—a group of individuals who come within the denomination of that class. We might say "all Bavarians." We might say "all those who were born in Prussia."

Mr. Gard: What is the practical application of the word "class"?

Mr. Miller of Minnesota: The practical application is left to the President. He can designate any group of individuals as a class and make them alien enemies. Now, just let me put this inquiry. I know we all want to get this thing straight.

Mr. Gard: Sure.

Mr. Miller of Minnesota: Turkey is an ally of an enemy of the United States, not an enemy at the present time. Suppose certain Turkish subjects in this country should

be guilty of very improper conduct. I can readily see how they might; and suppose the President should issue a proclamation declaring that all citizens of Turkey are hereby declared alien enemies of the United States. That would embrace all Armenians, who have for many, many years looked upon the United States as the one asylum in the world to which they could come and secure freedom from Turkey; and we should be taking those who have thus come to us for help and assistance, and have heretofore received it, and declaring them alien enemies and putting them in the category of those who cannot contract or buy anything, who cannot, as has been said, get a meal of victuals. That would not be fair.

Mr. Dewalt: I suppose, however, that the gentleman will concede this, that the President of the United States is supposed to have some discretionary wisdom.

Mr. Miller of Minnesota: Why give him the discretion if it is not necessary and if he is not going to use it?

Mr. Dewalt: I hold that it is necessary, because if an emergency arises where any class or body of individuals, or any individuals acting separately and alone, militate against the successful prosecution of the war, this power should be given and these restrictions placed upon them.

The Chairman: The time of the gentleman from Pennsylvania has expired.

Mr. Miller of Minnesota: I move to strike out the last word, for the purpose of asking the gentleman a further question. Could you not reach the purpose of your bill entirely, after you have described and mentioned individuals, by then adding a provision including individuals who are grouped or associated together for the purpose of doing this, that, or the other thing hostile to the United States, so that the operation of this law shall be confined only to those who as individuals act, or those who asso-

ciate themselves together with other individuals for the purpose of doing hostile things?

Mr. Dewalt: I see no objection to that at all, provided always the question of the grouping of these individuals and their acting in concert be left for the determination of the President of the United States.

Mr. Miller of Minnesota: I am perfectly willing to do that. One question further. A man who is a naturalized citizen of the United States is amenable to the laws of the United States in all respects. Now, are not those laws ample to punish or to handle any citizen of the United States who may be so far forgetful of his duties as a citizen as to perform acts that bring him within the scope of this bill? In other words, could you not just as well afford to leave out entirely the word "natives"?

Mr. Dewalt: I do not think so, for this reason: The parties who are foreign born, whether they be from Germany or from any other foreign country, can be divided into these separate classes, namely, those who are residents of this country and who may not be citizens of this country by naturalization, or they may be natives of the foreign country who are naturalized here and therefore no longer citizens of the foreign country. The provision of this section is to include both those classes; and whilst I see the force of the argument of the gentleman from Illinois [Mr. Mann] that it may work hardship in some cases, nevertheless, as he has very well said, we want to fight this war to a finish without doing harm, of course, to any innocent party.

This being an emergency measure and placing in the hands of the President this highly penal power seems to me ought to be restricted, but the restriction ought not in any way to hamper the action of the President.

Mr. Mann: Will the gentleman yield?

Mr. Dewalt: I will.

Mr. Mann: The gentleman would not claim that there is any distinction in the rights between the naturalized American citizen and the native-born American citizen?

Mr. Dewalt: Basically, no.

Mr. Mann: The gentleman by the bill confines the power of the President to shut off trading rights to naturalized American citizens, thereby drawing a distinction in favor of the native-born American citizens. Is it not the fact that there are many native-born American citizens who are making much more trouble about the war than are the naturalized American citizens?

Mr. Dewalt: They are subject to the laws of treason.

Mr. Mann: This bill does not attempt to cover them.

Mr. Dewalt: This provision does not apply to the native-born American citizen.

Mr. Mann: That is just what I am saying. It applies to the naturalized citizen. What is the distinction, as far as the constitutional rights are concerned, between the American citizen, native born, and the American citizen, naturalized? I always supposed that they stood on the same footing.

Mr. Dewalt: A naturalized citizen possesses all the rights of the native-born American citizen.

Mr. Mann: Then you have no greater power over the naturalized citizen than you would have over the native-born citizen, and yet we propose by the bill to exercise a power over the naturalized citizen which we do not attempt to exercise over the native-born citizen, drawing a distinction as to the patriotism of the German-born citizen naturalized in the United States, and his son born in the United States, and other people born in the United States. Does not the gentleman think it is rather an unwise distinction after all?

Mr. Dewalt: I cannot agree with the gentleman, for

the reason that there is always in my mind this subdivision of these foreign-born citizens.

Mr. Mann: And further, if the gentleman will permit, if the native-born citizen of the United States aids the enemy, we have ways of punishing him.

Mr. Dewalt: Yes.

Mr. Mann: And these same methods of punishment apply to the naturalized citizen. If we are safe in relying upon the existing laws to govern the native-born citizen, why are they not equally efficacious to rely upon in the case of the naturalized citizen; why make any distinction in this bill?

The Chairman: The time of the gentleman from Minnesota has expired.

Mr. Miller of Minnesota: Mr. Chairman, I ask unanimous consent that I may offer this amendment and have it pending.

The Chairman: There is an amendment already pending.

Mr. Miller of Minnesota: Then I withdraw my request.

Mr. Montague: The pending amendment, Mr. Chairman, is the motion of the gentleman from Massachusetts?

The Chairman: Yes.

Mr. Stafford: Mr. Chairman, there is only one purpose sought by the committee in their insistence upon having the word "natives" retained in the bill, and that is to authorize the President of the United States to classify naturalized citizens of German birth as enemies and subject them all to the penalties applicable to enemies, as provided in this bill. There are decisions of the Supreme Court of this country that hold under the liberalized rules of international law that it is not considered inimical to the welfare of the country to allow alien-born citizens of an enemy country domiciled in this country to trade with each other, provided they do not lend any assistance to

the enemy, and yet the gentleman from Pennsylvania, backed by other members of the committee, is insistent on giving this drastic power to the President, this absolute power that would be unbecoming even to the Czar of Russia, to allow him to take out and classify those in our country who are naturalized citizens, though as loyal as any native born. We are going indeed afar in this bill, and I am surprised that anybody will rise on the floor and advocate an autocracy like this, no matter who the man to exercise it may be. I am not saying anything against the wisdom or the high devotion of our President, but we should not, with the constitutional privileges guaranteed by the Constitution to citizens, native and naturalized, confer upon him power to single out natives of countries with which we are at war, and who have become naturalized, and classify them as enemies and refuse to permit them to do business or even to exist in this country.

Under public law there are two classes of residents, citizens and subjects. Those who are domiciled here and are not citizens of the United States will be included in the word "subjects." Even those who have taken out first papers under our law of naturalization are still subjects of the foreign government.

This bill is a war measure and sought to be enacted under the war powers of the Constitution. We have authority to exercise powers of sovereignty as a nation over citizenship, whether that citizen is native born or naturalized. If there are in this country—and I question whether there are—naturalized citizens who are disloyal to the country, they can be reached by municipal law, but we ought not to go to the extent, as advocated by the gentleman from Pennsylvania and the committee, of putting the sanction of Congress—because that is what we do—by conferring power on any individual to say that naturalized citizens of this country who happen to be natives of foreign coun-

tries living in this country shall have the ban put upon them of being refused the right to trade and be subject to all the other drastic penalties that apply to enemies. The gentleman from Virginia in his prefatory statement yesterday is in conflict with the position he now takes. Yesterday the gentleman stated that it was based on residence in the belligerent country, and now he is seeking to apply it to citizenship and domicile, apparently in contradiction of the position taken yesterday. I think we have not yet come to that pass in this free American country when we should even by appearance vest that power in the President or any other executive authority. [Applause.]

Mr. Sears: Mr. Chairman, will the gentleman yield?

Mr. Stafford: Yes.

Mr. Sears: If the word "natives" includes naturalized American citizens, would it not be class legislation to impose upon them a more drastic law than we impose upon other citizens?

Mr. Stafford: Certainly. It is almost unthinkable that we should find any person in this House advocating the retention of that word when the purpose of it has been pointed out by the gentleman from Massachusetts [Mr. Rogers]. The surprising thing to me is that since war was declared not only these naturalized citizens of German extraction but those of German birth who are not even naturalized, but who wish to be naturalized, are standing loyally by the Government. There is no disposition anywhere, so far as I am aware, among those six or eight or ten million persons of German extraction who are in this country not to stand loyally by the country. They have subscribed liberally to the liberty bonds, and they have subscribed to the Red Cross fund, and they are doing everything that the native American citizens would be expected to do, and it ill becomes any Member here to try to

justify the sanctioning of such authority as is embodied in this clause.

Mr. Romjue: Mr. Chairman, I move to strike out the last word. In a discussion of this question a very interesting proposition has been raised. I have listened with extreme interest to the arguments which have been presented, and the argument of the gentleman from Wisconsin [Mr. Stafford] meets a good deal with my approval, so far as it refers to the word "natives." We need a modification, but it will not do to strike the word out entirely. If you will follow me carefully I think I can show you why this section should be modified. The gentleman from Illinois [Mr. Mann] a few moments ago hit the nail squarely on the head when he said that a naturalized citizen of this country stands upon the same footing that a native-born American citizen does; and to my mind it seems that if we should draw any distinction in the enforcement of our laws as between naturalized citizens and native-born citizens of America, our bill in that regard would be unconstitutional, because it would not be guaranteeing equal rights to all the citizens of our country. When a person from a foreign country becomes a citizen of this country he is guaranteed all of the rights that you and I native-born citizens have. Some have suggested that to get around the point at issue we strike out the word "natives." That would then permit the native-born German who has become a naturalized citizen to stand equally with the American citizen here; that far it is all right, but what is the result when you strike out the word "natives"? This paragraph reads:

Such other individuals, or body of individuals, as may be natives, citizens, or subjects of any nation with which the United States is at war, wherever resident or wherever doing business, as the President, if he shall find the safety of the United

States or the successful prosecution of the war shall so require, may, by proclamation, include within the term "enemy."

I can see where there might be a native of Germany who is not a citizen of this country nor a citizen of any of the warring powers.

Mr. Stafford: Mr. Chairman, will the gentleman yield?

Mr. Romjue: Yes.

Mr. Stafford: Can the gentleman conceive of any individual who is not a citizen or a subject of some nation?

Mr. Romjue: No; I can conceive of no individual who is not a citizen or a subject of some nation.

Mr. Stafford: Then these two classes would cover all those who are citizens or subjects of any nation. There are only two classes recognized in international law—citizens or subjects.

Mr. Romjue: I will ask the gentleman to follow me for just a moment. You will notice that the text is:

That if the President finds that a successful prosecution of the war or the safety of the United States requires he may, by proclamation, designate natives, citizens, and subjects of our enemy nations in this war, as enemies.

You will notice from a reading of the paragraph that it covers all natives, citizens, and subjects of the nations with which we are at war. But a man may be a native of Germany and yet not now be a citizen or subject of Germany for the very simple reason that, though he was born in Germany, he has renounced his citizenship and has become a citizen of some other power, to wit, he may have become a citizen of Brazil or Sweden and if you strike "natives" out of this bill you will deprive the President of authority under this bill to handle such a person as he

could handle the undesirable citizen of Germany. So to strike it out would be to err in that regard at least.

On the other hand, to leave the word "native" in the bill unmodified would mean that we would be enacting a law that would be enforceable against a native of Germany who is now a subject and citizen of this country, and who is no longer a citizen and subject of Germany, but yet a native of Germany. This would set up a rule, or rather a statute, enforceable against native-born Germans who are now citizens of the United States and the same law would not apply to nor affect American-born citizens. Manifestly this would be wrong, and the President and no other thoughtful American citizen wants anything else than that all American citizens, whether naturalized or native born, abide by the same laws.

We are not at war with some of the nations of the world, and I repeat, that a native-born German may have renounced his German citizenship and yet he may not have taken out American citizenship. He may be a citizen of some other country that is at peace with all of the warring factions, if that be possible at this time. Therefore I say it is important that you do not strike out the word "natives" entirely.

Mr. Black: Mr. Chairman, will the gentleman yield?

Mr. Romjue: Yes.

Mr. Black: Does not the gentleman think that it would be sufficient to say "natives, except naturalized American citizens"?

Mr. Romjue: Yes; I think an amendment of that kind would correct the entire matter, and I really believe it ought to be adopted, because, as I said a moment ago, I do not believe we can constitutionally draw a distinction and enforce it as between naturalized and native-born citizens in this country, and ought not to attempt to do so.

Mr. Walsh: Mr. Chairman, will the gentleman yield?

Mr. Romjue: Yes.

Mr. Walsh: Will the gentleman state how he construes the words "if he shall find the safety of the United States or the successful prosecution of the war shall so require"? Does he construe that to mean that these people shall do some positive act which will threaten the safety of the country or the successful prosecution of the war, or does he construe it to mean that the mere fact that they are naturalized citizens of enemy or ally to the enemy origin is sufficient to threaten the safety of the country or the successful prosecution of the war?

Mr. Romjue: In answer to the gentleman I would say this, that there has been a great deal said here in this House from time to time about the authority that is given to the President of the United States, and we might as well say now that we are in a war, the most serious war that the world has ever seen, and we must trust some one. Some doubt the wisdom of giving President Wilson the authority that has been given to him, but there is not a man on the floor of this House who would intentionally sacrifice the honor of this Nation or do any injustice in carrying on the war, and I think it ill becomes us to question Mr. Wilson's motives and what he will do. We must give to somebody general blanket authority if we want to carry this war on successfully. If the President is given the authority under this bill it seeks to bestow, so far as dealing with enemies of this Government is concerned I have no hesitancy in believing that authority will not be abused and the power it is sought to give is essential to the welfare of this Government. I will say I know of no better way of judging President Wilson's attitude in the future than by a consideration of the past, so far as regards people who will come under the provision of this bill, and, so far as I am concerned, I am ready

for a little more drastic medicine for the spies who have sought to undermine our country.

Mr. Parker of New Jersey: Mr. Chairman, just a moment. I am in favor of striking out the word "natives." It may be worth while to give the President power over all aliens, but I do not believe in giving the President any power over naturalized citizens that is not given over other citizens. Whether they be native or naturalized—born abroad—they are citizens.

Mr. Fess: Mr. Chairman, will the gentleman from New Jersey yield for a question?

Mr. Parker of New Jersey: If I have the time.

Mr. Fess: Is there a stage in the process of naturalization where the one seeking naturalization is neither a subject or a citizen of the country from which he comes?

Mr. Parker of New Jersey: No. He declares his intention, but he does not renounce allegiance until he is naturalized.

Mr. Fess: When he renounces allegiance that does not affect the entire loss—

Mr. Parker of New Jersey: The declaration of intention does not renounce allegiance. Allegiance is renounced upon naturalization but not before.

Mr. Fess: There is no twilight zone when a man is without a country?

Mr. Parker of New Jersey: No, sir.

Mr. Fess: Is the gentleman sure of that?

Mr. Parker of New Jersey: Yes.

Mr. Dewalt: Mr. Chairman, in line with the suggestion and at the instigation of the gentleman from Virginia [Mr. Montague], who has charge of the bill, let me propose to the gentlemen who have taken exception to the word "natives" this tentative proposition, as suggested by the gentleman from Missouri. After the word "natives" insert the words "other than naturalized citizens."

Mr. Miller of Minnesota. Why not use the language "who are not citizens of the United States"? That will take away any stigma that may seem to attach.

Mr. Dewalt: That would be the same thing—"who are not citizens of the United States." What would the gentleman say as to that phraseology? The gentleman from Illinois had objection to the word "natives," and I understood he had another amendment. How would that meet the objection of the gentleman from Illinois?

Mr. Miller of Minnesota: Yes.

Mr. Mann: Where would that come?

Mr. Dewalt: After the word "natives," on page 24, line 19, insert "who are not citizens of the United States."

Mr. Mann: Well, the purpose would be all right, as far as I am concerned, but it would have to be a parenthetical insertion there. It would have to be a provision put inside of parentheses, and that is not very good legislation.

Mr. Dewalt: If you insert after the word "natives" these words: "Such other individuals or body of individuals as may be natives, except such as are citizens of the United States"?

Mr. Longworth: Let me ask, Who would that leave in the category? Who would be natives who would not be citizens of the United States under this paragraph?

Mr. Dewalt: Those who are natives of foreign countries.

Mr. Longworth: Of the enemy's country. Who would they be?

Mr. Dewalt: There might be a great many of them.

Mr. Longworth: I can not think of any.

Mr. Rogers: Let me answer the question. Take the case of a man born in Germany who goes to Holland and is naturalized there and then comes to the United States and is naturalized here.

Mr. Burnett: Why not have the word "natives" stricken

out entirely and leave it "citizens or subjects of any nation"?

Mr. Dewalt: I do not know whether the gentleman from Alabama listened to the argument of the gentleman from Missouri, which was very able, in reference to the retention of the word "natives" in some form.

Mr. Gard: If the gentleman will permit a suggestion, how would the suggestion that the word "non-naturalized" be placed before the word "natives" strike the gentleman? What does the gentleman think of that?

Mr. Dewalt: That would cure it, "or body of individuals as may be non-naturalized." I think that would cure it, and that would meet the suggestion.

Mr. Mann: Why not strike out the word "natives"? Every other case is covered by the language of the bill.

Mr. Burnett: That is my suggestion.

Mr. Mann: Strike out the word "natives."

Mr. Dewalt: Mr. Chairman, I recognize the force of the argument of the gentleman from Illinois in regard to the constitutionality of the provision, as it would clearly make a distinction between naturalized citizens of the United States and native-born citizens of the United States, and recognizing also that we all desire to frame the best legislation that we can with due regard to the interest of all the citizens of the United States whether they be natural or native-born or foreign-born, and yielding to none, in spite of the remarks of my eloquent friend from Wisconsin, in my admiration for the Germans, because I, too, am of German birth—my forefathers were born there, and I am of Pennsylvania German stock—recognizing all that, and desiring the best legislation in the interest of all, I would ask to strike out the word "natives." [Applause.]

* * * * *

The question was taken, and the amendment was agreed to.

Mr. Miller of Minnesota: Mr. Chairman, I offer the following amendment.

The Chairman: The gentleman from Minnesota offers an amendment, which the Clerk will report.

The Clerk read as follows:

Amendment offered by Mr. Miller of Minnesota:
Page 24, line 18, after the word "class," insert: "of individuals associated together for any purpose inimical to the safety of the United States or the successful prosecution of the war."

Mr. Miller of Minnesota: Mr. Chairman, may I inquire of the gentleman in charge of the bill if he is willing to accept that?

Mr. Montague: Mr. Chairman, I ask that the amendment be read again.

The Chairman: Without objection, the Clerk will report the amendment:

The amendment was again reported.

Mr. Miller of Minnesota: Mr. Chairman, by inadvertence the words "of individuals" were inserted and should not be included.

Mr. Montague: May I ask the gentleman how far his words—

The Chairman: Without objection, the gentleman from Minnesota [Mr. Miller] will be permitted to modify his amendment.

Mr. Miller of Minnesota: The amendment must be made to strike out the words "of individuals" and insert it as I have made it.

The Chairman: The Clerk will report the amendment as modified.

The Clerk read as follows:

Strike out the words "of individuals" and insert

the following: "associated together for any purpose inimical to the safety of the United States or the successful prosecution of the war."

Mr. Miller of Minnesota: The words "of individuals" must be included in the amendment.

Mr. Mann: Insert that after the word "individuals."

Mr. Dewalt: Will the gentleman from Minnesota [Mr. Miller] yield for a moment?

Mr. Miller of Minnesota: Certainly.

Mr. Dewalt: I ask, with the permission of the Chairman, that the Clerk read the subsection now as it would read with the gentleman's amendment in it.

The Chairman: The Clerk will again report the amendment as modified.

The Clerk read as follows:

Amendment offered by Mr. Miller of Minnesota: Page 24, line 18, after the word "class," strike out the words "of individuals" and insert the following: "of individuals, associated together for any purpose inimical to the safety of the United States or the successful prosecution of the war."

Mr. Montague: The word "of individuals" stricken out, not the word "individuals" contained in your amendment as offered and not the "individuals" contained in the bill itself?

Mr. Miller of Minnesota: That is correct.

Mr. Dewalt: Suppose the Clerk reads the section with the amendment in it.

Mr. Mann: It is just as though the word "individuals" had not been stricken out.

Mr. Montague: We have no objection to that.

Mr. Mann: I think the gentleman ought to consider it

very seriously. Will the gentleman yield for a question?

Mr. Miller of Minnesota: I will be glad to do so.

Mr. Mann: Under the gentleman's amendment, as I understand it, if the President desires to declare anyone an alien enemy under the provisions of this act as a body or a class it must be people who are associated together for the purpose of injuring the United States in the war?

Mr. Miller of Minnesota: That is correct.

Mr. Mann: Of course, that would be a matter of proof. The Government would have to prove when the matter came into court that these people were associated together. Now, does it not occur to the gentleman that there may be cases, quite a number of them, arising where the President should have the power to forbid German citizens or corporations in the United States to carry on business? We are commencing not merely a regular war, but we are commencing a trade war with Germany, partly by this bill and partly by what has taken place heretofore. We may find as a result of this bill that all American citizens in Germany are forbidden to do business over there. That might be prevented if the German Government knew that if they did that over there the President would promptly respond by forbidding German citizens over here doing business.

Mr. Miller of Minnesota: I am very frank to answer that I do not think the President ought to have the power in a wholesale manner to put the stigma of alien enemy upon a class of people who are residents within the United States, without any proof or knowledge that many of the individuals included are disloyal to the Government of the United States or are engaged in hostile or improper conduct.

Now, I do not think England has gone that far, and she has gone a good ways when she has made a blacklist, which she has done to our exceeding sorrow and disad-

vantage. She did not blacklist groups or classes, but individuals, and that ought to be the test in the United States. We ought not to punish innocents any more than we ought to permit guilt while we are trying to avoid punishing innocents. We ought to be able to pick out the guilty and punish them. That is the theory upon which all law is founded, and that ought to be the theory of law in case of war. If there is a class of individuals or citizens of Germany, Austria, or Bulgaria, or any other nation, who are associated together for purposes hostile to the United States, in any form, it is easy to find out who they are and to punish them. But let us not put the stigma upon everybody that happens to be a citizen of those countries.

Mr. Mann: Mr. Chairman, will the gentleman permit?

Mr. Miller of Minnesota: Certainly.

Mr. Mann: If there is any body or class of foreigners in the United States co-operating to injure the United States in this war, have we not got laws to punish them?

Mr. Miller of Minnesota: Well, I suppose that is so.

Mr. Mann: What is the use, then, of putting this in? We have penal provisions against anything of that sort. That is treason, to begin with. We have laws covering those things. We passed a number recently covering everything of the sort.

Mr. Miller of Minnesota: This is much broader language than that respecting treason. A person can be punished under this paragraph who could not be punished for treason.

Mr. Mann: It might not be treason so that it could be proved; but we have laws covering the cases to which the gentleman would confine this to.

Mr. Miller of Minnesota: I do not think so, if the gentleman will permit. This language says, "in the successful prosecution of the war." That might mean anything.

Mr. Mann: The gentleman is trying to reduce his amendment to an irreducible minimum by stating that is does not mean anything.

Mr. Miller of Minnesota: Oh, no; I am not.

Mr. Mann: If it means that the President is restricted in making his proclamation to classes who are actually engaged in co-operation with each other, which is a conspiracy to begin with and punishable under the conspiracy statutes, the gentleman takes away all power of the President over the matter at all; and if you want to do that the proper way to do it is to strike out all except "individuals" here; strike out "body or class." It would not mean anything, it seems to me; but I say that with due deference for the opinion of the gentleman, for whom I have the highest regard. It would not mean anything to say that the President may declare to be alien enemies the men engaged in a body who are actively engaged in a conspiracy against the United States.

Mr. Miller of Minnesota: There is a distinction between an individual who is performing by himself what we might call direct acts against the safety of the United States, or against the successful prosecution of the war, and—

The Chairman: The gentleman's time has expired.

Mr. Mann: Mr. Chairman, I ask unanimous consent that the gentleman's time be extended five minutes.

The Chairman: Is there objection to the request of the gentleman from Illinois?

There was no objection.

Mr. Miller of Minnesota: There is a distinction which should be drawn between that kind of an individual and one who may be associated with a large number of others, he himself doing nothing whatever except to give aid and comfort to the organization or agents of the organization doing the active work, and therefore there are two classes

that the President ought to have the right to reach. Now, instead of the language I have quoted restricting the President, in my opinion it enlarges the field of his operations. Why? It enables him to issue his proclamation against all individuals as such and all who are associated together or in any way engaged in any enterprise against the successful prosecution of the war. That might be an association of individuals who are opposed to the selective draft. They are not amenable to the laws of the United States at this minute, but the President might, if they were aliens, say that such an organization is inimical to the safety of the United States and against the successful prosecution of the war, and make these men that which they really are—enemies of the United States.

Mr. Dewalt: Mr. Chairman, will the gentleman yield?

Mr. Miller of Minnesota: Certainly.

Mr. Dewalt: The fault in the gentleman's amendment to my mind and to the mind of the members of the committee is this—and it is suggested very well by the gentleman from Illinois [Mr. Mann]—that it would place upon the Government the burden of proof as to this association for inimical purposes. When the gentleman first spoke of his amendment I suggested to him that he should incorporate in it these words, "that such association be determined by the President of the United States solely," and said that there was no objection to that.

Mr. Miller of Minnesota: I have no objection to that being incorporated in it; none whatever.

Mr. Dewalt: Now, I ask, Mr. Chairman, that the Clerk read in the gentleman's time, if he will permit it, Sub-division Section (c) as amended, so that we shall have it clearly.

The Chairman: Does the gentleman from Minnesota yield for that purpose?

Mr. Miller of Minnesota: I do.

The Chairman: The Clerk will read.

The Clerk read as follows:

Page 24, line 18:

“(c) Such other individuals or body or class of individuals associated together for any purpose inimical to the safety of the United States or the successful prosecution of the war as may be citizens or subjects of any nation with which the United States is at war, wherever resident or wherever doing business, as the President, if he shall find the safety of the United States or the successful prosecution of the war shall so require, may, by proclamation, include within the term ‘enemy.’”

Mr. Laguardia: Mr. Chairman, will the gentleman yield?

Mr. Miller of Minnesota: Yes.

Mr. Laguardia: Would not such an act within itself constitute a crime under existing law?

Mr. Miller of Minnesota: No; it would not.

Mr. Laguardia: I do not agree with the gentleman.

Mr. Miller of Minnesota: I have just cited an instance.

Mr. Laguardia: Yes; and the instance cited is opposition to the selective draft. The gentleman no doubt is aware of the fact that yesterday two persons were convicted in the United States Court for the Southern District of New York of that very act.

Mr. Miller of Minnesota: A man doing that might bring himself within the laws now existing, but he might do a whole lot of acts that are not included in the laws now existing.

Mr. Laguardia: He is taking that man and classifying him as an alien.

Mr. Miller of Minnesota: That is what I am trying to do.

Mr. Laguardia: If he commits an act and that act is a crime, the laws now take of it.

Mr. Miller of Minnesota: The purpose of this act is to prevent the commission of acts that are not crimes under existing laws.

Mr. Laguardia: I think the gentleman is making this section vicious.

Mr. Mann: Mr. Chairman, will the gentleman yield?

Mr. Miller of Minnesota: Yes.

Mr. Mann: The gentleman has noticed that the latter part of this paragraph requires the President to make the findings before he can name these individuals or bodies or classes of individuals.

Mr. Miller of Minnesota: I noticed that.

Mr. Mann: And that he shall find, if the safety of the United States or the successful prosecution of the war shall require, that these people shall be declared alien enemies. Now, the gentleman proposes to insert at the beginning of the paragraph a jurisdictional class against which the President makes a finding at the end of his confirmation, but making it jurisdictional as to his authority to do anything about it at all that certain facts exist, which facts probably could not be ascertained until the war was over. It is drastic as the bill stands, but if we are going to have it drastic, and if the gentleman is in favor of having it drastic—

Mr. Miller of Minnesota: I am in favor of having it drastic but not drastic in the sense of working a hardship upon innocent individuals.

Mr. Mann: I understand that, but the paragraph itself provides that the President shall make the finding, which the gentleman from Minnesota proposes to make jurisdictional.

Mr. Miller of Minnesota: I do not think so.

Mr. Mann: Oh, yes.

Mr. Miller of Minnesota: Not jurisdictional in that sense.

Mr. Mann: Oh, yes. If it is not jurisdictional, then it is merely duplication, because he has to make the finding. If it is jurisdictional, it is destructive, as it seems to me.

Mr. Miller of Minnesota: If the gentleman will give me his attention, I desire to say this: As the paragraph is drawn the President can find that these individuals are acting in such a way as to be opposed to the safety of the United States or the successful prosecution of the war. If this amendment that I propose be adopted, there will be two things. Not only will he have authority to find that individuals are doing that, but he will also have authority and be required, if he exercises his authority, to find that individuals are associated together for the purposes—he has to make a finding of the purpose—for the purpose of being opposed to the safety of the United States or the successful prosecution of the war. Then he can do to them the same things that he can now do to individuals under the provisions of the bill as drawn.

Mr. Mann: Well, he can do that now.

Mr. Miller of Minnesota: There are two findings that he will have to make. Under this provision as drawn he has to make one finding. If the amendment is adopted he will have to make two, as far as the individuals affected by this are concerned, namely, he must find that they are associated for this purpose—

Mr. Mann: The gentleman is one of the clearest-headed lawyers in this House, but on this matter he is wrong.

The Chairman: The time of the gentleman from Minnesota has expired.

Mr. Miller of Minnesota: I ask unanimous consent for two minutes more.

The Chairman: The gentleman from Minnesota asks unanimous consent that his time be extended two minutes. Is there objection?

There was no objection.

Mr. Miller of Minnesota: The purpose of this amendment is just one thing, and, to my mind at least, it can be befogged so as to be obscured. It is to relieve from the harshness of this proposed law a class of individuals in the United States. I at first thought we might better strike out the body and the class. I think that is the opinion of the gentleman from Illinois [Mr. Mann], and that is the reason for his objection to this. After the debate that has occurred I do not go quite that far, because I can readily see that a class of individuals might be associated together for purposes that they ought to be prevented from carrying out and yet they would not be brought within the terms of this bill if we strike out the body or the class. But in order that in handling them we may not by that act inflict an unjust and unwarranted hardship upon innocent individuals, I propose to modify it so that if it shall become necessary for the President to act in reference to a body or class of individuals he must first find that the individuals who comprise the class and are being proceeded against are associated for an improper or enemy purpose.

Mr. Montague: Mr. Chairman, after the amendment of the gentleman from Minnesota [Mr. Miller] was presented I indicated my acceptance of it, but subsequently I found, upon reading it at the Clerk's desk, that I had not fully understood it. I therefore believe I was premature in indicating such acceptance.

This bill has been very carefully drawn. A great deal of time has been spent upon it. I submit to the committee

that we ought to be conservative in making changes in it. Now, as respects this amendment, the provision that the individuals must be associated for what he terms inimical purposes—affecting the safety of the United States or impairing the successful prosecution of the war—requires the finding of a precedent jurisdictional fact. It imposes a condition precedent before the President can act. He must, as the gentleman from Illinois [Mr. Mann] has suggested, duplicate his actions. It is either a duplication or it puts an unnecessary burden upon the President, for he must practically first find the existence of a conspiracy, which should not be put upon him in this emergency; and I submit to the committee that we had better let it stand as found in the section.

Mr. Gard: Mr. Chairman, I ask that the clerk read the section as it is already amended, with the proposed amendment of the gentleman from Minnesota, so that we may understand it.

The Chairman: If there be no objection, the Clerk will report the paragraph, as suggested by the gentleman from Ohio.

There was no objection.

The Clerk read as follows:

Page 24, line 18:

“(c) Such other individuals or body or class of individuals associated together for any purpose inimical to the safety of the United States or the successful prosecution of the war as may be citizens or subjects of any nation with which the United States is at war wherever resident or wherever doing business as the President, if he shall find the safety of the United States or the successful prosecution of the war shall so require may, by proclamation, include within the term ‘enemy.’”

Mr. Burnett: Mr. Chairman, if the amendment of the gentleman from Minnesota [Mr. Miller] is left as it is it seems to me to be a most dangerous proposition. I believe that the amendment offered by the gentleman from Minnesota modifies it and perhaps makes it just. If it is left in its present form, an innocent member of a body of individuals may be punished simply because that body is doing something inimical to the Government.

The gentleman from Illinois [Mr. Mann] has made a very cogent suggestion in regard to the two findings required of the President. The finding of one fact would be the finding of the other, and certainly whether the word "find" was in there or not the President ought not to do that unless he finds the fact to be true. He simply ascertains it; that is all. Talk about the burden of proof. Certainly the President will want to be convinced in some way before he does an injustice to somebody, and whenever he is convinced, and he has to be convinced by an investigation or by proof, and whenever he finds that they are banded together for purposes inimical or hostile to the United States, then the other finding follows, and it seems to me the gentleman, in splitting hairs, has made an argument here that shows a tendency, if the committee contention prevails, to bring about a dangerous condition. We have in our Constitution the right of trial by jury. We suspend all those things as to aliens during the war. Possibly that is right in emergencies, but certainly the President ought to have something upon which to act, and can he just pick up any man and merely because he is a native of Germany conclude therefore that that man is guilty of something that is inimical to the Government or that he ought to be suppressed or regarded as an alien enemy? Certainly the President will act upon some proof. He must act upon some fact, and some reasonable fact.

Now, we all know that the President is a busy man, and we know that he will not have time to give these matters the personal investigation that perhaps a judicial tribunal would have the time and the opportunity to give, and that is a greater reason why we ought to hedge it about so that we will not be a government by autocracy.

Believing that our President is patriotic and would not desire to do an injustice to anyone, and the very fact that he can not give each individual case that kind of investigation that ought to be given when we declare that a man is an enemy to this Government, ought to cause us to hedge the law about by every means possible to keep an injustice from being done. I think the talk about putting the burden of proof is an argumentum ad absurdum, because it implies that the burden will not be on the President otherwise to reach his findings. Whenever the first finding is passed then it seems to me he passes easily to the second finding, and that is easily determined by the proof that authorizes the first.

I have very few German people in my district, not one-thirtieth of the population of that district, and I believe that the most of them, especially the naturalized citizens, are just as true and loyal to the Government and our flag as anybody else. I was glad when we struck out the opprobrium sought to be placed upon them by saying that a native-born German, even though he was a naturalized citizen, and even if he had joined the Army and was following the flag, if some evil genius wanted to bring trouble to him, might be declared an enemy under the great power given to the President. I tell you, gentlemen, we ought not to be swept off our feet; we ought to proceed cautiously. I believe the whole of this sentence ought to be stricken out. I believe it ought to be an individual proposition. If the President can find that anyone is

inimical to our Government, why could not he fix a penalty for individual responsibility without embracing a whole class? I believe the whole sentence ought to go out in the form in which it is presented to us, because if we do not strike it out it will make more enemies, and say to our German friends, even though they have taken out naturalization papers and are not doing anything against us, "We are branding you as enemies," and will make in their hearts enmity that they do not all feel. [Applause.]

Mr. Montague: Mr. Chairman, I ask for a vote.

The Chairman: The question is on the amendment offered by the gentleman from Minnesota.

The question was taken, and the amendment was rejected.

* * * * *

Mr. Rogers: Mr. Chairman, I desire to read in full article 23 of the treaty entered into between the United States and Prussia in 1799.

ARTICLE 23.

If war should arise between the two contracting parties, the merchants of either country then residing in the other shall be allowed to remain nine months to collect their debts and settle their affairs, and may depart freely, carrying off all their effects without molestation or hindrance; and all women and children, scholars of every faculty, cultivators of the earth, artisans, manufacturers, and fishermen, unarmed and inhabiting unfortified towns, villages, or places, and in general all others whose occupations are for the common subsistence and benefit of mankind, shall be allowed to continue their respective employments, and shall not be molested in their persons, nor shall their houses or

goods be burnt or otherwise destroyed, nor their fields wasted by the armed force of the enemy, into whose power by the events of war they may happen to fall; but if anything is necessary to be taken from them for the use of such armed force, the same shall be paid for at a reasonable price.

We entered into a further treaty with Prussia in 1828, and, by article 12 of the 1828 treaty, article 23, which I have just read from the treaty of 1799, was continued in full force and effect. I suppose there can be no doubt under the decisions of the Supreme Court, and under the course of the State Department during the European war, that certainly until our declaration of war with Germany on the 6th day of April, 1917, article 23 of the treaty of 1799, which I have just read, was still in full force. I suppose there can be no doubt that certain provisions of the bill before the House are inconsistent with article 23. Notably would this be true of the provision on page 24 of the bill, subsection c, which was discussed at some length this morning and which permits the President, by proclamation, to include within the term "enemy" the citizens or subjects within the United States of Germany or any other country with which the United States may be at war.

Now, the question comes whether article 23 of the treaty of 1799 is to-day in full force and effect. The committee will notice that the treaty contemplates a state of war. It can not be said of article 23, as it can be said of many articles of a treaty between two belligerents, that it was abrogated by our declaration of war last April. The article itself, as the opening words disclose, specifically contemplates a state of war between the two parties to the treaty. "If war should arise between the two contracting parties" is the language of the treaty. It seems to me that

it is of importance for the record, in order that there may be accurate knowledge of our exact status as a party to that treaty, and of the exact status of United States citizens in Germany and German citizens in the United States, that we should be fully cognizant whether in passing this trading-with-the-enemy bill we are recognizing the provisions of the treaty of 1799 as still in force. If I can get the opinion of the gentleman from Virginia [Mr. Montague] or the gentleman from Pennsylvania [Mr. Dewalt] on this subject, I should like to do so.

I notice that the gentleman from Pennsylvania in his remarks yesterday seemed to indicate that the treaty, in his opinion, was abrogated and no longer in force. I should like to ask him to state on what ground he arrived at that opinion.

Mr. Dewalt: Mr. Chairman, in response to the inquiry of the gentleman from Massachusetts, what I did state yesterday was, consisely, this: My colleague from Pennsylvania [Mr. Steele] inquired of me whether the committee had taken into its thought the fact that there existed a treaty between Prussia and the United States, referring specifically, of course, to the treaty which has just been mentioned by the gentleman from Massachusetts—that of 1799. Fortunately, it so happened that I had that very treaty at that time before me and still have it, as reported in Senate Document No. 37, on the page therein referred to.

In the course of my remarks then, I stated this, and I desire now to repeat it, not only for the information of the gentleman, who I have no doubt is thoroughly informed upon the subject, but for the information of the other members of the committee who may have doubts upon the subject. This act provides that the enemy shall be, by description, one who is living in hostile territory; in other words, in territory of the nation with whom we

are at war, or in the territory of the ally of that nation, and all of the provisions of this bill necessarily only apply to those who are resident within that territory.

Mr. Rogers: How does the gentleman deal with Subsection (c) of Section 2, which is to be found on page 24 and which specifically deals with the citizens or subjects of Germany within the United States?

Mr. Dewalt: They are by proclamation of the President to be made subject to the provisions of this bill.

Mr. Rogers: Yes; but if the President took advantage of this law and issued such proclamation, he would thereby make an enemy, within the language of the law, of a person of German extraction and citizenship now living in the United States.

Mr. Dewalt: Why should he not, if that person is doing anything which is hostile to the interests of this country?

Mr. Rogers: I am entirely in sympathy with the propriety of granting that permission to the President, but how does it dovetail in with the treaty?

Mr. Dewalt: It does not interfere with the treaty at all, for this reason: If at any time within the war powers of the Government, by reason of the hostile acts of the belligerent who is at war with another nation or who is now at war with us, to wit, Germany, it becomes necessary for this Government to abrogate the treaty, it can do so at once without any negotiations, and that would be in effect an abrogation of this treaty.

Mr. Rogers: I understand that fully. It is, then, the position of the gentleman from Pennsylvania that the treaty of 1799 is now in full force and effect as far as Article 23 is concerned, but that the passage of this law will make it possible for the President, in his discretion, to abrogate Article 23?

Mr. Dewalt: I believe that the policy of the Government was best indicated by the President's proclamation, in which he said that the property of neutrals residing in this country should be held inviolate.

Mr. Rogers: Will not the gentleman state his opinion as to whether Article 23 of the treaty of 1799 is effective to-day or not?

Mr. Dewalt: I cannot answer that except in consonance with the action of the President of the United States by his proclamation; but this I can say, that I do not believe that treaty applies to any of the individuals who are residents in this country, except by specific proclamation, because they are not enemies within the terms of the bill. The basic idea must not be forgotten that the enemy is one who is resident in hostile territory, and therefore does not apply to German residents here.

The Chairman: The time of the gentleman from Massachusetts has expired.

Mr. Rogers: Mr. Chairman, I ask unanimous consent to proceed for five minutes more.

The Chairman: Is there objection?

There was no objection.

Mr. Rogers: Mr. Chairman, of course the gentleman knows very well that there are perhaps six or eight different classifications of the word "enemy" contemplated in this bill. It is quite true, as he states very clearly, that in so far as certain of those classifications are concerned there could be no suggestion that Article 23 was being violated, but in so far as other classifications are concerned it seems reasonably clear that if the treaty is still in full force and effect, and if the proclamation which this bill permits were issued, there would be a direct and square violation of the treaty. Therefore it would seem to be of consequence to ascertain whether or not to-day Article 23 of the treaty of 1799 is still in effect.

Mr. Dewalt: In reply to that let me quote for the gentleman's information from page 34 of the testimony that was taken in the testimony before the committee, and I am now reading from the testimony of Mr. Warren, one of the Assistant Attorneys General. Mr. Esch asked him a question, and I quote now from his testimony:

Mr. Esch: Did not the old Prussian treaty provide for the protection of merchants and that they should have nine months to return to their own country and dispose of their goods, and so on, with reciprocal rights for our merchants in Germany?

Mr. Warren: That applies to alien enemies domiciled in this country, and the bill has no application at all to them, except so far as the President is authorized, if he finds the safety of the country demands it, to extend the term "enemy" to cover those persons. You will note that we specifically make no provision at all regarding alien enemies resident in the country. The bill does not touch them.

* * * * *

The Chairman: And if they behave themselves their property will not be placed in charge of a custodian.

Mr. Warren: Oh, no. This bill does not in any way touch the property of an alien enemy resident in this country. The line of policy laid down in the President's proclamation of April 6, that the lives and property of all alien enemies in this country shall be absolutely protected and safe so long as they behave themselves—to put it in a popular way—is absolutely adhered to in this bill.

Mr. Parker of New Jersey: Is there not a treaty which covers the German ships in this country?

Mr. Warren: No, sir; that is a very popular misapprehension. That particular section of the first treaty was not confirmed in the later treaty, so that the only treaty provision which is now in existence is the treaty provision relative to merchants domiciled in this country, who may have nine months in which to depart therefrom with their goods and effects.

The Chairman: Mr. Warren, if I understand your statement, a German domiciled in this country—one who is not naturalized—if he is living here and transacting business, is not affected at all in his person or property by this bill?

Mr. Warren: He is not affected in the slightest degree, with this single limitation: If the safety of the country demands it, the President is given the power to extend the term “enemy” to such persons.

The Chairman: Which would depend entirely upon the conduct of him and others like him?

Mr. Warren: Which would depend absolutely on the conduct of such persons in this country. So far as we can see at the present time, no necessity for the inclusion of alien enemies in this country within the term “enemy” has arisen or is likely to arise; but no one can tell. If this war continues the length of time which some persons believe it may, no one can tell what conditions may arise in this country with reference to alien enemies. It may be necessary for the term “enemy” to be applied to them also; but the bill as drawn does not now apply to them.

I think that is a categorical answer to the gentleman's question, and in further response to the gentleman's inquiry permit me to state that Mr. Warren, from whom I

have quoted, said specifically that the only treaty provision which is now in existence is the treaty provision relative to merchants domiciled in the country, who may have nine months within which to depart therefrom with their goods and effects.

Mr. Rogers: That, of course, answers my question in so far as the opinion of Mr. Warren can answer it. Mr. Warren thinks that provision from the treaty of 1799, which I read, is still in full force and effect.

Mr. Dewalt: Yes.

Mr. Rogers: And the gentleman agrees, does he not, that the very day after this bill is signed by the President he would have the power under the law to issue a proclamation defining as enemies the residents of German citizenship in this country?

Mr. Dewalt: Precisely.

Mr. Rogers: Does the gentleman think it is wise for us to leave extant and in force a treaty with Germany and at the same time give the President power to fly contrary to the terms of the treaty?

Mr. Dewalt: In reply to that I would say to the gentleman from Massachusetts that I have long desired and have had an ambition to become Secretary of State, but not having yet arrived at that distinction I do not think I can answer the question.

The Chairman: The time of the gentleman from Massachusetts has again expired.

Mr. Lenroot: Mr. Chairman, I move to strike out the last word. With reference to the very interesting proposition raised by the gentleman from Massachusetts as to whether the treaty of 1799 is still in force, he refers to Article 23, and I think it might be well to read Article 12 of the same treaty, which is as follows:

Experience having proved that the principle adopted in the twelfth article of the treaty of 1785,

according to which free ships make free goods, has not been sufficiently respected during the last two wars, and especially in that which still continues, the two contracting parties propose, after the return of a general peace, to agree either separately between themselves or jointly with other powers alike interested, to concert with the great maritime powers of Europe such arrangements and such permanent principles as may serve to consolidate the liberty and the safety of the neutral navigation and commerce in future wars. And if in the interval—

That is the situation raised at the time the declaration of war was made.

And if in the interval either of the contracting parties should be engaged in a war to which the other should remain neutral, the ships of war and privateers of the belligerent power shall conduct themselves toward the merchant vessels of the neutral power as favorably as the course of the war then existing may permit, observing the principles and rules of the law of nations generally acknowledged.

Now, Mr. Chairman, the very cause of the war in which we are now engaged was not only a violation of the rules of international law in the submarine warfare by Germany, but the express and flagrant violation of Article 12 of this very treaty of which the gentleman speaks, and there can be no question that when one of the contracting parties to a treaty deliberately and flagrantly violates one of its principal provisions the other contracting party is no longer bound by that treaty or held to it. On that I quote from Hall on international law:

The general rule, then, is clear that a treaty which

has been broken by one of the parties to it is not binding upon the other, through the fact itself of the breach, and without reference to any kind of tribunal.

Woolsey lays down the same doctrine. So that whether or not this present bill does violate Article 23 of the treaty, Germany certainly will never be in a position to complain, because she was the first violator of that treaty and the United States is perfectly free to consider it as no longer binding.

Mr. Rogers: Will the gentleman yield?

Mr. Lenroot: I will.

Mr. Rogers: I am told the State Department takes exactly the position of the gentleman from Wisconsin, that the treaty of 1799 has been abrogated by the acts of Germany; but does not the gentleman think it is more cognizant with upright dealing as a nation if we face the question in some way or other through the action of the State Department and Congress in announcing that the treaty is dead and we are no longer bound by it in legislating on any trading-with-the-enemy act?

Mr. Lenroot: I think that would be preferable; I was simply arguing what I believed the situation was. I would like to insert in the Record, without reading, Article 13, which is along the same line and is, as the gentleman from Pennsylvania [Mr. Temple] suggests, and even stronger than Section 12. It is as follows:

ARTICLE 13.

And in the same case of one of the contracting parties being engaged in war with any other power, to prevent all the difficulties and misunderstandings that usually arise respecting merchandise of contraband, such as arms, ammunition, and military

stores of every kind, no such articles carried in the vessels, or by the subjects or citizens of either party, to the enemies of the other shall be deemed contraband, so as to induce confiscation or condemnation and a loss of property to individuals. Nevertheless, it shall be lawful to stop such vessels and articles and to detain them for such length of time as the captors may think necessary to prevent the inconvenience or damage that might ensue from their proceeding, paying, however, a reasonable compensation for the loss such arrest shall occasion to the proprietors; and it shall further be allowed to use in the service of the captors the whole or any part of the military stores so detained, paying the owners the full value of the same to be ascertained by the current price at the place of its destination. But in the case supposed of a vessel stopped for articles of contraband, if the master of the vessel stopped will deliver out the goods supposed to be of contraband nature, he shall be admitted to do it, and the vessel shall not in that case be carried into any port nor further detained, but shall be allowed to proceed on her voyage.

All cannon, mortars, firearms, pistols, bombs, grenades, bullets, balls, muskets, flints, matches, powder, saltpeter, sulphur, cuirasses, pikes, swords, belts, cartouche boxes, saddles, and bridles beyond the quantity necessary for the use of the ship, or beyond that which every man serving on board the vessel, or passenger, ought to have, and in general whatever is comprised under the denomination of arms and military stores, of what description soever, shall be deemed objects of contraband.

Mr. Huddleston: Will the gentleman yield?

Mr. Lenroot: I will.

Mr. Huddleston: The treaty that the gentleman has referred to is a so-called treaty of amity and commerce?

Mr. Lenroot: Yes, sir.

Mr. Huddleston: There could have been no war between the contracting parties for a breach of that treaty. The treaty itself provides for a condition of war. The treaty itself provides what shall occur in the event one or the other of the contracting parties shall violate the treaty.

Mr. Lenroot: Let me make this statement: I have not recently read the treaty in all of its articles, but I apprehend that there might be a cause for war that would not be an express violation of the different articles of that treaty.

Mr. Huddleston: The matter I direct to the gentleman's attention is the fact that the treaty itself is a peace provision—it is a treaty of amity and friendship.

Mr. Lenroot: Surely.

Mr. Huddleston: And hence there could not have been any war without a breach of a treaty which is a treaty of amity and friendship, and since the treaty itself makes provision for cases which necessarily arise after a breach of the treaty, how can the gentleman say that because one of the provisions of the treaty is broken that which provides for that which shall be done is also abrogated?

Mr. Lenroot: The title of this, of course, is “a treaty of amity and friendship,” but the gentleman will recognize there might be a treaty termed one of “amity and friendship” dealing with certain specific subjects, and yet there might be a cause for war, and war would be actually engaged in outside of any infringement of the specific articles named in the treaty.

Mr. Huddleston: But the gentleman has said that this war arose because of the breach of Article 12.

Mr. Lenroot: I said it arose because of a violation of international law that was expressly covered in Article 12.

Mr. Huddleston: So that this Article 23, if I recollect the correct number of it, was intended to cover just the particular case that could arise when Article 12 was broken?

Mr. Lenroot: No. The gentleman does not get my point. I assume that the general rule of international law concerning the breaking of a treaty would still prevail, but war might exist through some other cause than a violation of the particular articles of the treaty, in which case Article 23 would, of course, prevail.

The Chairman: The time of the gentleman has expired.

Mr. Huddleston: Mr. Chairman, I move to strike out the paragraph, for the purpose of continuing my colloquy with the gentleman.

The Chairman: The Chair will state to the gentleman that by unanimous consent the paragraph was passed by until later on in the consideration of the bill.

Mr. Montague: That paragraph is passed.

Mr. Huddleston: Mr. Chairman, I ask unanimous consent for two minutes.

The Chairman: The gentleman from Alabama asks unanimous consent for two minutes. Is there objection?

There was no objection.

Mr. Huddleston: Mr. Chairman, I want to call the attention of the gentleman from Wisconsin [Mr. Lenroot] to the fact that as between private contracting parties the relation is not necessarily terminated because of the breach of one of the terms of the contract by one of the parties. The breach must be of a term which is essential to the subject matter of the contract. If we should apply to contracts between nations the same rules of good faith and reasonable construction that we apply to contracts

between private parties, we can not say that merely because one of the terms of the treaty has been broken another provision of the treaty, which necessarily implies that it shall remain in force after a breach of the other provisions and war has occurred between the contracting nations, has been abrogated.

Now, it seems to me that this is an important point. Are we to regard our treaties as "scraps of paper"? If we are to do so, let us do it, at least as a frank and brave Nation, by saying so. Let us denounce the treaty. But let us not slip and slide around and ignore the plain provisions of a treaty intended to apply to the very conditions that exist at this time.

Mr. Lenroot: I would like to ask the gentleman a question: Assuming that Germany violates every paragraph of the treaty, violates every principle of international law, does the gentleman think that the United States in its relations with Germany should consider itself bound in all of its promises with Germany and let Germany go free?

Mr. Huddleston: I will say in reply to the gentleman that I am not arguing that we ought to observe this clause of the treaty or expressing an opinion whether it is still in effect, but I do say that we ought to say one thing or the other. We ought to say bravely and honorably that the entire treaty has been terminated by the acts of Germany; we ought to take that responsibility; or we ought to live up to it and not try to evade the effect of it. It is clear to me that we are now legislating inconsistently with the terms of that treaty.

* * * * *

Amendment offered by Mr. Esch: Page 29, line 17, after the word "enemy," insert "or to any person whom there may be reasonable cause to believe to be an enemy or ally of an enemy."

Mr. Mann: Mr. Chairman, let us see what the effect of that amendment may be.

Mr. Esch: After the word "enemy" on page 29, line 17, we insert the words "or to any person whom there may be reasonable cause to believe to be an enemy or ally of an enemy."

Mr. Montague: If the gentleman from Illinois [Mr. Mann] will pardon me, do I understand my colleague from Wisconsin to place his amendment at page 29, line 17, after the word "enemy"?

Mr. Esch: Yes.

Mr. Miller of Minnesota: May I inquire of the gentleman who is to determine whether there is reasonable cause?

Mr. Mann: Here is the situation: The law would authorize and direct the payment of money, and so forth, to the custodian—money belonging to an enemy or ally of an enemy. That is a question of fact. Reasonable belief is not a question of fact.

Mr. Esch: But it enlarges the scope of the section.

Mr. Mann: Supposing he is a citizen of the United States; if the money is deposited with the custodian and he is a citizen of the United States he is entitled to have the money paid over to him, but as deposited under this amendment I do not know whether he would ever get his money or not. If he is an enemy under the terms of this bill, then the custodian receives it. If he is not an enemy and the custodian has received it, then he can make the custodian turn it over to him. But under your provision you authorize the custodian to receive money which I may owe to the gentleman from Wisconsin. I turn it over to the custodian with the statement that I have reason to believe that the gentleman from Wisconsin is an enemy, and then the custodian has it. I know of no way of getting it away from him. But if we turn the money

over to the custodian improperly—money belonging to some one who is not an enemy—it is recoverable. I am not sure, but I know what the gentleman wants to cover.

Mr. Esch: It will have to be carried in subsequent sections of the bill. There are other places where like language can be inserted.

Mr. Mann: You propose by the bill to pay over to the custodian money or property which belongs to an enemy, under the definition of the term "enemy" in the bill. You do not want to do any more than that. You do not want to turn anybody else's property over to the custodian unless he is in fact an enemy, and if the custodian receives the property belonging to some one who is not an enemy, I think the custodian could be sued for it.

Mr. Lenroot: Express provision is made in the bill for that later on.

Mr. Madden: If the custodian is in doubt about it he could keep it.

Mr. Longworth: Would the custodian or the Secretary of Commerce be the one to decide whether or not there is reasonable cause to suspect a person of being an enemy?

Mr. Esch: The custodian would be the person officially to administer this property.

Mr. Mann: A man might have reason to believe that the man is an enemy when that is not the fact.

Mr. Longworth: The custodian might believe it and the Secretary of Commerce might not believe it.

Mr. Esch: I do not think that would work out in actual practice.

Mr. Huddleston: Mr. Chairman, I would like to ask the gentleman a question as to the constitutionality of this amendment, as applicable to the citizen who is suspected of being an alien enemy—that part of the Constitution about taking property from a man without due process of

law. This would take a citizen's property without due process of law.

Mr. Mann: Under the gentleman's amendment?

Mr. Huddleston: Yes.

Mr. Mann: It seems to me, personally, that it would be safer to leave it where it is, so that if the money is turned over to the custodian the right of the custodian to hold it would depend on whether the debtor is in fact an enemy.

Mr. Esch: I shall not insist on the amendment.

The Chairman: Does the gentleman from Wisconsin ask to withdraw it?

Mr. Esch: Yes; I ask unanimous consent to withdraw the amendment.

The Chairman: The gentleman from Wisconsin asks unanimous consent to withdraw his amendment. Is there objection?

There was no objection.

* * * * *

Mr. Huddleston: It is argued that the Prussian treaty was abrogated and is not now in effect, whereas there can be no doubt that our treaty with Bulgaria is in full effect.

Mr. Cooper of Wisconsin: We are at war with Prussia.

Mr. Huddleston: Yes; and we are not at war with Bulgaria.

* * * * *

Mr. Dewalt: Irrespective of the fact that we are at war with Germany, the treaty obligation of 1799, in so far as it applied to merchants having the right to transport their goods from this country within nine months, was recognized by the President of the United States by his proclamation of April 6. In conformity with that idea this bill was drawn, with the provision, however, that when the President of the United States deemed it necessary for the

protection of this country, in the furtherance of the interests thereof in the prosecution of the war, he might declare by proclamation that those parties in this country were subject to the provisions of this act. Now, this act also provides not only that the enemy shall be subject to the provisions of the act, but that the allies of the enemy shall be subject thereto.

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(Congressional Record, July 11, 1917, Page 545.)

TRADING WITH THE ENEMY.

Mr. Montague: Mr. Speaker: I move that the House resolve itself into the Committee of the Whole House on the state of the Union for the further consideration of the bill H. R. 4960.

* * * * *

The Clerk read as follows:

A bill (H. R. 4960) to define, regulate, and punish trading with the enemy, and for other purposes.

The Chairman: When the committee arose on yesterday there was under consideration an amendment offered by the gentleman from Massachusetts [Mr. Rogers]. Without objection, the Clerk will again report the amendment.

The Clerk read as follows:

Amendment offered by Mr. Rogers: Page 32, lines 3 and 4, after the word "trustee," strike out the words "appointed prior to the beginning of the war and."

Mr. Montague: Mr. Chairman—

Mr. Rogers: I understood the amendment was satis-

factory to the gentleman from Virginia, and, if so, I do not care to take any time on it.

Mr. Montague: I just wanted it to go over.

Mr. Rogers: I conferred with the gentleman from Pennsylvania [Mr. Dewalt], and I understood it was satisfactory to him.

Mr. Montague: Mr. Chairman, the amendment offered by the gentleman from Massachusetts [Mr. Rogers] withholds the application of the provision relating to payments to the agent or trustee, whether or not that agent was appointed prior to the outbreak of the war.

I desire to call the attention of the committee to the exception to the appointment of agencies of this character, as held by the decisions of the Supreme Court, some of which I have heretofore read, is in allowing payment of debts to the agent of an alien enemy where such agent resides in the same State with the debtor. Now, that is American law, but in every case which I have examined the agent was appointed prior to the outbreak of the war. International law prevents the appointment of an agent by the enemy in our territory. It interrupts all intercourse; all trade. There are very grave reasons why this principle of law should not obtain.

Mr. Stafford: Will the gentleman yield there?

Mr. Montague: Yes; I will.

Mr. Stafford: I have read several text writers on international law, and they invariably use the phrase "commercial intercourse," and there are writers who say that private communications are not forbidden during the pendency of war.

Mr. Montague: I will say to the gentleman that he evidently has not in mind the amendment of the gentleman from Massachusetts.

Mr. Stafford: I am questioning the gentleman's statement that all intercourse is absolutely forbidden by inter-

national law. So far as I have read the text-writers they only refer to the interception of commercial intercourse.

Mr. Montague: That is all that this bill deals with.

Mr. Stafford: Further than that, by all means. You prevent the transfer of any property whatsoever, the rents from any property, whether it is the result of commercial intercourse or not, and prevent the payment to the duly accredited agent of the creditor domiciled in this country.

Mr. Montague: I desire to call the attention of the committee to only one principle, which is vital, that after the outbreak of a war the citizen of one belligerent has no authority to appoint an agent in the territory of another belligerent to handle his property, to hold his property, to attend to his business. If so, we establish a basis of credit in our country by which the enemy creditor will derive immense benefits. Should we thereby enlarge and augment the commercial resources of the enemy? This is the fixed principle, as I understand it, of international jurisprudence. No power of attorney can be made after the war has opened. So all of the agents, found in the decisions examined by me, falling within the exception to which I have alluded are agents that were appointed prior to the outbreak of the war. And therefore the section in question was drawn with that view in mind, of preserving the law as declared by the decisions of our own courts in relation to this question.

The Chairman: The time of the gentleman has expired.

Mr. Dewalt: Mr. Chairman, I ask that the gentleman's time be extended.

Mr. Montague: I do not care for any more time.

Mr. Lenroot: Mr. Chairman, I ask unanimous consent that the gentleman's time may be extended for five minutes?

The Chairman: Is there objection? [After a pause.]
The Chair hears none.

Mr. Lenroot: I would like to ask the gentleman as to what his view is as to what is accomplished by Subdivision Section (b)? That would not exist in the absence of this subdivision.

Mr. Montague: So far as the agent is concerned, to which I am addressing myself, this amendment permits you to appoint an agent after the outbreak of the war, whereas the bill requires the agent to have been appointed before the outbreak of the war, and the appointment of an agent prior to the outbreak of the war complies with international law as interpreted by our courts.

Mr. Lenroot: The question I wanted to ask is: Does the language as reported from the committee in any sense or degree modify or change existing international law? In other words, if the section was stricken out would not the situation then be exactly as the gentleman now contends it should be?

Mr. Montague: I am not prepared to answer that question affirmatively, but it is safe to say that there are perhaps several portions of this bill that if stricken out the subject matter to which they relate would be taken care of by international law. But the purpose of the bill, as I have heretofore accentuated, is to define more concretely international law.

Mr. Lenroot: Well, was it not the general purpose of this bill, as stated by the gentleman, to rather mitigate the harshness of existing international law, and so far as that was not done, international law still applied in all of its parts?

Mr. Montague: I think as a general statement the gentleman's position is correct, but I do not think that that position touches the particular amendment of the gentleman from Massachusetts.

Mr. Lenroot: Mr. Chairman, I would like to be recognized in my own time.

The Chairman: The gentleman is recognized.

Mr. Lenroot: As has just been stated, in so far as enemies are concerned, that are recognized as such under international law, the language of this subsection does nothing more than declare what existing international law is. But as the bill now stands, and even as it will stand as amended—if Section 2 is amended, as I hope it will be when we return to it later on—even then the word “enemy” will have a much wider definition than is now recognized by existing law; and as the bill now stands it would prohibit and make unlawful this kind of a transaction: Suppose a cargo of coffee has been shipped to this country from Rio Janeiro, in Brazil, and the merchant that shipped it has an agent—not an established house of business, but an agent—in Germany, and transacts some business, if he can get coffee into Germany, and sells such coffee in Germany as he may be able to get through. A cargo of coffee is shipped into this country prior to the beginning of the war. A draft is drawn on the consignee or purchaser of the coffee, through the National City Bank of New York, we will say, for the payment of that cargo of coffee. Under this bill the merchant in Rio Janeiro, Brazil, is an enemy of this country; will be an enemy even if the amendment that I have suggested to the gentleman from Virginia shall be adopted. If, then, the purchaser of that coffee pays that draft to the National City Bank of New York, under the bill as it now stands the payment is unlawful. The man has not paid his debt at all, and the merchant in Rio de Janeiro can not recover the money from the National City Bank of New York that has been paid for that cargo of coffee.

I do not believe, Mr. Chairman, that in this bill this House desires to go to any such extent, and it seems to

me that this Subdivision (b) of Section 7 ought not to remain in the bill at all. We ought not, certainly so far as transactions are concerned prior to the passage of this act—

Mr. Montague: Mr. Chairman, will the gentleman permit an interruption?

Mr. Lenroot: Yes; when I have finished this sentence. We ought not to put a ban on all commercial transactions and say that they are void in every instance. The merchant in South America may happen to have an agent in Germany, which he has a perfect right to have under international law, and under international law we have no right to treat that merchant in South America as an enemy in this country, so far as business not relating to Germany is concerned, but only as to business between that country and our own.

Now I yield to the gentleman.

Mr. Montague: May I state to the gentleman that I partially concur in his views as respects Subdivision (b) on page 31? That was not in the original bill as reported and considered by the committee. It was subsequently put in after elaborate hearings accorded to an association of importers in order to ameliorate the trade relations and to give benefits to those who do business of the character described by the gentleman, which they could not do without the authority contained in the proviso.

Mr. Lenroot: That was the proviso?

Mr. Montague: Yes.

Mr. Lenroot: I have read the hearings; and, of course, without the proviso everything would have been void, and, of course, this ameliorates the condition to some extent. But, as I have read the hearings very carefully from beginning to end, it seems to have escaped every person who appeared before the committee—the wide and broad definition of the word “enemy”—and it never seems to

have been discussed before the Committee on Interstate and Foreign Commerce as to whether or not that definition of the word "enemy" was not so sweeping as not only to be in violation of international law but as to prevent all commerce with all neutrals wherever any business was done by a neutral with an enemy of ours.

The Chairman: The time of the gentleman from Wisconsin has expired.

Mr. Lenroot: I ask for five minutes more, Mr. Chairman.

The Chairman: Is there objection to the gentleman's request?

There was no objection.

Mr. Lenroot: While I am on my feet discussing this Subdivision (b) I would like to ask the gentleman from Virginia as to what his construction of this section is on the language, "If any property, money, or other property so held or so owned shall have been after the beginning of the war conveyed," and so forth. Is it the gentleman's construction that this provision relates only to transactions occurring after the beginning of the war and prior to the passage of this acts, or is it his construction that it relates to transactions not only prior to the passage of the act and the beginning of the war but to all future transactions?

Mr. Montague: My construction is that the provision relates from the outbreak of the war and continues as long as the war lasts.

Mr. Lenroot: Very well. Then, I want to call the gentleman's attention to this fact: That under that construction that he now gives it there is no exception in the language, "all payments to all enemies are made absolutely void." There is no exception, although the person might be licensed to trade with the enemy, and that license includes the making of payments. Nevertheless under

this subdivision payments would be absolutely void, although he held a license to trade.

Mr. Dewalt: Mr. Chairman, addressing myself particularly to the point now at issue, and having reference only to the amendment offered by the gentleman from Massachusetts, which is to strike out, on page 32, in line 3, after the word "trustee," the following words, "appointed prior to the beginning of the war," we have this situation confronting us: International law recognizes and has established that payments can be made and considered to be valid acquittances in law to an agent who is duly authorized, and with whom his principal is still consulting, and which principal recognizes the agent. But the Supreme Court of the United States, in *Insurance Co. against Davis*, clearly foreshadows and states that this agency must have been established prior to the declaration of war. In confirmance of that, permit me to refer the gentleman from Massachusetts [MR. ROGERS] to page 431 of *Ninety-fifth United States*, in which this is said:

But though a power of attorney to collect debts, given under such circumstances, might be valid, it is generally conceded that a power of attorney can not be given during the existence of war by a citizen of one of the belligerent countries resident therein to a citizen or resident of the other, for that would be holding intercourse with the enemy, which is forbidden.

Further on it is said as follows:

Perhaps it may be assumed that an agent ante bellum, who continues to act as such during the war, in the receipt of money or property on behalf of his principal, where it is the manifest interest of the latter that he should so do, as in the collection of rents and other debts, the assent of the principal

will be presumed unless the contrary be shown; but that, where it is against his interest, or would impose upon him some new obligation or burden, his assent will not be presumed, but must be proved, either by his subsequent ratification or in some other manner.

Mr. Rogers: Will the gentleman yield?

Mr. Dewalt: One moment, after I have finished this citation. On page 429 of the same opinion we find this:

As war suspends all intercourse between them, preventing any instructions, supervision, or knowledge of what takes place, on the one part, and any report or application for advice on the other, this relation necessary ceases on the breaking out of hostilities, even for the limited purpose before mentioned—

Mr. Stafford: Will the gentleman read the following clause?

Mr. Dewalt: Yes.

Mr. Stafford: "Unless continued by the mutual assent of the parties."

Mr. Dewalt: Exactly—

unless continued by the mutual assent of the parties.

But all through this decision the Supreme Court, through Mr. Justice Harlan, said that the agency must have been established ante bellum, and the reason for it is very clear in the mind of the justice, that immediately upon the breaking out of hostilities and the declaration of war all intercourse between the belligerents ipso facto ceases.

Mr. Lenroot: Will the gentleman yield for a question?

Mr. Dewalt: Yes.

Mr. Lenroot: Is it the gentleman's contention that the

declaration of war in itself suspends all intercourse between neutrals who may be doing some business—

Mr. Dewalt: Oh, that is not the question which we are now discussing.

Mr. Lenroot: That is the question.

Mr. Dewalt: It is not pertinent to this inquiry. We are now discussing the question as to whether or not an agency can be established and maintained after the declaration of war. That is the question.

Mr. Lenroot: Can it not, by a neutral who may be doing business with the enemy? That is my question, and it is directly pertinent to the gentleman's amendment.

Mr. Dewalt: No; if he is dealing with the enemy and the enemy profit by such dealings, then of course he is the agent of the enemy.

Mr. Lenroot: Although the dealings he has with us have no relation to his dealings with the enemy?

Mr. Dewalt: Ah, I grant you that that would be the exception; yes.

Mr. Lenroot: Yes; but it is absolutely prohibited under the language of the bill as it now stands.

Mr. Dewalt: No; I am not talking about that provision of the bill. I am talking now about this amendment of the gentleman from Massachusetts [MR. ROGERS].

The Chairman: The time of the gentleman has expired.

Mr. Rogers: I ask unanimous consent that the time may be extended five minutes.

The Chairman: Unanimous consent is asked that the time of the gentleman be extended five minutes. Is there objection?

There was no objection.

Mr. Lenroot: May I ask the gentleman this? He thinks that the inquiry does not relate to the gentleman's amendment. Supposing a neutral does business with an enemy

as an agent appointed after the war, in this country, with relation to a business that has no connection with his business in Germany. Unless the gentleman's amendment is adopted, is not that transaction made absolutely void?

Mr. Dewalt: I can not follow the gentleman's conclusion at all.

Mr. Rogers: Will the gentleman yield for a question?

Mr. Dewalt: Yes.

Mr. Rogers: I should like to read to the gentleman a sentence in the Davis opinion prior to that which he read, and which begins at the bottom of page 430:

What particular circumstances will be sufficient to show the consent of one person that another shall act as his agent to receive payment of debts in an enemy's country during war may sometimes be difficult to determine.

And the sentence which the gentleman read—

But though a power of attorney to collect debts given under such circumstances might be valid—

And so forth.

Mr. Dewalt: Oh, yes; a power of attorney to collect debts might be valid.

Mr. Rogers: In other words, the Supreme Court certainly leaves open the question whether a power of attorney to collect debts created after war has begun is valid.

Mr. Dewalt: Now, will the gentleman permit me?

Mr. Rogers: Yes, indeed.

Mr. Dewalt: That would be true if the Supreme Court had not in the very same breath said in the succeeding line that—

A power of attorney can not be given during the existence of war by a citizen of one of the bel-

ligerent countries resident therein to a citizen or resident of the other.

Mr. Rogers: But it specifically intimates that a power of attorney to collect debts may be valid. The question presented by my amendment relates to the legitimacy of payments of debt in this country. Now, will the gentleman consider this case: Supposing an agency is created by a German in Germany, the agent being a resident and citizen of the United States. That agency is created May 1. There was nothing hostile about that act. There is no commercial intercourse involved in that act. As a result of it a citizen of the United States pays the debt—which he owes to a German subject—to the agent in the United States.

It is conceded that if that agency had existed prior to the war and continued after war began it would have been a perfectly valid payment. Is there any difference in the nature of things between an agency established one day before the declaration of war and one established one day after the declaration of war? Does it help out the debtor citizen of the United States to tell him that if he had paid an agent appointed April 5 it would have been valid, but because he paid the agents appointed April 7 the payment is void, although made in perfectly good faith?

Mr. Dewalt: In response to that I will say that while it may not be fair to the individual to whom the gentleman has referred, it is fair and eminently just to the whole body of the people. Why? Because the initial idea in the whole act, the initial idea of international law, is immediately upon the declaration of war all intercourse shall cease between the belligerents. And further than that, granting that it is a hardship on the individual, nevertheless just as soon as you allow the establishment of these agencies subsequent to the declaration of war you

are forming a basis of intercourse between the belligerents which the act prohibits and international law does not recognize. When you do that you are establishing a basis of credit for the enemy in this country by recognizing agencies established after the declaration of war. I can not make it any clearer than that.

Mr. Mann: Mr. Chairman, the amendment of the gentleman from Massachusetts relates only to the proviso, Paragraph (b), Section 7. The proviso only legitimatizes payments made before the passage of this act. It does not relate to future transactions. Now, what is the objection? Somebody has appointed an agent in this country in good faith, after the declaration of war and before the passage of this act, and money has been paid to that agent. What is the objection to permitting that payment to stand as valid?

Mr. Montague: I will say to the gentleman that I have an amendment which I shall offer which perhaps may cover the point in the gentleman's mind. Will the gentleman permit me to read it?

Mr. Mann: Certainly.

Mr. Montague (reading)—

Page 32, line 8, after the word "war," strike out the period, insert a colon, and add:

"Provided further, That no person shall, by virtue of any assignment, indorsement, delivery or transfer of any debt, obligation, or chose in action made or to be made in his favor by or on behalf of an enemy or ally of an enemy, have any right or remedy against a debtor, obligor, consignor, indorser, or person delivering the same, unless he prove that the assignment, indorsement, delivery, or transfer was made under license as provided in this act, or was made before the beginning of the war."

Mr. Mann: I will not undertake to express an opinion upon that, because it has not yet soaked into my mind; but it has nothing to do with the question involved in this amendment. Here is the proposition: You propose to say by this proviso that if a payment is made by a citizen of the United States of a debt owing to a German citizen to the agent of the German citizen, not to be transmitted during the war, that that payment is valid provided the agent was appointed before the war commenced. What is the objection to extending that by saying provided the agent is appointed and payment is made before this act takes effect? We do not want to absolutely undertake to prevent all payments of indebtedness which our people may owe to German citizens. The world has changed much since these provisions of international law were called international law. Business transactions have changed throughout the world. It is better for us to keep good faith as far as possible. I can not see what objection there is if such payment has been made in good faith before the passage of the act to let it stand, even if it were for the benefit of the German citizen.

But take the case suggested by the gentleman from Wisconsin [MR. LENROOT], where payment is made in good faith for a neutral country; what is the sense in saying that if payment was made before the passage of the act it is void? This does not extend to the future. The proviso does not legitimize payments made in the future; it only refers to payments made before the passage of the act. As far as the enemy is concerned, I am in favor of prosecuting the war with Germany. I am in favor of licking the German Government. There is nothing else for us to do. As far as commerce is concerned that has taken place in the past, I believe in keeping good faith, as gentlemen throughout the world endeavor to do.

Mr. Montague: Mr. Chairman, I am as much in favor

as the gentleman from Illinois of keeping good faith with Germany, and I recognize fully the rights existing at the outbreak of the war, but I am first in favor of protecting American rights and American trade, and I shall cast no vote here, if I know it, by which German credit shall be established or enhanced. [Applause.] I shall not vote to give the enemy a base of supplies in America through commercial agents, trusts, or otherwise, and I beg the committee not to insert this amendment by which we in a measure will emasculate our rights and impair our safety.

Mr. Mann: Mr. Chairman, the gentleman makes a speech that is very good but has nothing to do with the subject.

Mr. Montague: That is the gentleman's opinion.

Mr. Mann: I am going to explain it, if the gentleman will permit me. This proviso proposes by itself to cut off what would be some of the rights of American citizens. It proposes to legitimize certain payments made for indebtedness. Now, the gentleman says you go just so far and that is proper, but if you go a step further in good faith that is improper. I do not think that is good judgment. If these payments have been made in good faith before the passage of this act, the gentleman proposes to recognize a part of them, and I propose to recognize all of them made in good faith, the payments of course not to be transmitted to the enemy.

Mr. Sherley: Mr. Chairman, will the gentleman yield for a question?

Mr. Mann: Certainly.

Mr. Sherley: What does the gentleman say about payments that may be made from now until this becomes a law? If the gentleman's proviso is put in, you are inviting payments until the passage of this act.

Mr. Mann: Permitting them undoubtedly.

Mr. Sherley: I suggest to the gentleman that it is rather serious matter.

Mr. Mann: Oh, I do not think there is anything serious about it at all. Why should not we permit payments? Payments in the main go to neutrals; they do not go to the German citizens. The neutrals are the ones who are specially interested.

Mr. Sherley: If the gentleman's position is right, why should we have any limitation of time? You have to have one at some point. The gentleman is urging that the time limitation shall be when the act takes effect, whereas the committee has been urging that the time limitation should be the appointment of an agency before the war.

Mr. Mann: Until the law is passed.

Mr. Sherley: Why put it then? Why not let it go on continuously, if the gentleman does not think it is important?

Mr. Mann: I think it is important that payments made now which are permitted under the law to these neutrals should stand as valid payments.

Mr. Montague: If the gentleman will permit, how long would the gentleman continue it?

Mr. Mann: Until the passage of the act.

Mr. Montague: When will this act likely be passed?

Mr. Mann: I hope that we shall pass it very soon.

Mr. Sherley: If payments are permitted now, the prohibition in this act will not make invalid a payment that was valid when made.

Mr. Mann: That is exactly what it does do.

Mr. Sherley: Perhaps the gentleman is right.

Mr. Mann: This is a proviso—

Mr. Sherley: The gentleman is probably right.

Mr. Mann: It does make it invalid.

Mr. Sherley: I was thinking for a moment of an *ex post facto* law and not of a law impairing the validity of contracts.

Mr. Mann: This bill proposes that you can not make a

payment to a neutral doing business in the United States who happens to have had or who has an agent in Germany, though that neutral may be doing a great amount of business with us. This prohibits those payments, makes them invalid, and the exception provides that if payments are made to an agent appointed before the war they shall be valid. I say that the exception should come down as far as the time when you make the payment itself invalid. By the section we make the payment invalid, but payments that have been made before they are made invalid ought to be treated as valid payments. To do otherwise is outraging all commercial sense of honor.

Mr. Montague: Mr. Chairman, I ask for a vote upon the amendment of the gentleman from Massachusetts [MR. ROGERS].

The Chairman: The question is on the amendment offered by the gentleman from Massachusetts.

The question was taken; and on a division (demanded by MR. ROGERS) there were—ayes 39, noes 48.

So the amendment was rejected. .

* * * * *

The Clerk read as follows:

Modified amendment: Page 32, line 8, after the word "war," strike out the period, insert a colon, and add:

"Provided, further, That no person shall by virtue of any assignment, indorsement, delivery, or transfer of any debt, obligation, or chose in action, made or to be made in his favor by or on behalf of an enemy or ally of enemy, have any right or remedy against the debtor, obligor, assignor, indorser, or the person delivering the same, unless under license as provided in this act, or was made before the beginning of the war."

Mr. Lenroot: Mr. Chairman, this amendment again raises this very troublesome question of the status of transactions occurring prior to the passage of this act and after the beginning of the war. If this amendment is adopted in its present form, and an assignment has been made by a neutral in good faith to an American citizen upon a purely business transaction between that citizen and this country, if that neutral happens to have an agent residing in Germany, all his rights are cut off. Not only that, but the American citizen may have paid to that neutral the full extent of the obligation, secured an assignment of it, which he had a right to do under international law, and yet if this amendment is adopted that American citizen, holding that obligation by indorsement or assignment, is prohibited from suing the debtor.

Mr. Montague: Will the gentleman from Wisconsin permit me?

Mr. Lenroot: Yes.

Mr. Montague: From the gentleman's standpoint that conclusion obtains. I do not concede it. But if the amendment which the gentleman offered relating to the definition of "enemy" should be carried, then the objection made to this amendment would not obtain.

Mr. Lenroot: No.

Mr. Montague: Therefore I suggest to the gentleman—

Mr. Lenroot: I hope the gentleman will accept the amendment which I have offered. I think the gentleman is correct, that if that amendment should be adopted it would take care of this.

Mr. Montague: In other words, the definition of "enemy" will or will not control the amendment.

Mr. Lenroot: That is true; but unless that amendment is adopted the bill as it now stands would render absolutely void innocent transactions carried on in the utmost

good faith, and undoubtedly would deprive many American citizens of property rights that they would enjoy under international law.

The Chairman: The question is on the amendment offered by the gentleman from Virginia.

The amendment was agreed to.

* * * * *

Mr. Hill: If we do not know what the bill means and the committee does not know what the bill means, it seems to me that they ought to withdraw it and give it more thorough discussion, and come back prepared to say what it does mean.

Mr. Lenroot: Mr. Chairman, will the gentleman yield?

Mr. Hill: Yes.

Mr. Lenroot: The gentleman from Virginia is incorrect wherein he states that the President has a right by proclamation to prevent United States citizens from doing business with any alien, wherever resident, provided that alien does business with Germany.

Mr. Montague: I did not say that he has a right to prevent his doing business.

Mr. Hill: He can not do business without entering into a financial transaction.

Mr. Montague: This bill classes a man who does business within Germany as an enemy of America. He is, quoad that business, a resident of Germany.

Mr. Lenroot: If the President so proclaims, a German citizen, a resident of the Argentine Republic, having no business relations with Germany, still comes within the provisions of the bill.

Mr. Hill: Mr. Chairman, I want to go a little bit further. I want to look out for the future, after the war is over. We can not live for ourselves for the rest of time. We have to consider conditions after the war is over. I

think we are duplicating tremendously annoying propositions here that will come back to plague us after the war is over. If I have a correct recollection of the facts, at the second Hague conference the nations of the world agreed that private property in time of war should not be subject to confiscation. An attempt was made to have that so with private property on sea.

The Chairman: The time of the gentleman from Connecticut has expired.

Mr. Hill: Mr. Chairman, I ask unanimous consent to proceed for 10 minutes more.

The Chairman: Is there objection?

There was no objection.

Mr. Hill: The conference asked that the same thing might be done with regard to private property on sea, and Great Britain, with the largest navy in the world, refused to permit it. It was done in regard to private property on land. Now, we say that we will do what we choose under the stress of war. The nations have agreed that under the stress of war private property in the hands of an individual owner shall be sacred on land. I do not care whether Great Britain has violated it or not. Because she has violated it she has no right to ask us to do the same. The gentleman says that she has not. I say that we are following in her footsteps under entirely different conditions, 3,000 miles removed from the scene of the conflict.

Mr. Quin: Mr. Chairman, will the gentleman yield?

Mr. Hill: Yes.

Mr. Quin: I want to show if this is a war measure; whether it will continue after the war. The gentleman seems to think it will go on after the war is over.

Mr. Hill: It will depend entirely upon the Paris conference and the agreement of the allies after the war, and

we are bound by it morally, whether we are actually or not. I do not want to see this Nation enter into an economic war after the war is over.

Mr. Quin: I agree with the gentleman.

Mr. Hill: We are laying the foundation for just that sort of thing in bills of this character.

Mr. Moore of Pennsylvania: Mr. Chairman, if the gentleman will permit—

Mr. Hill: Yes.

Mr. Moore of Pennsylvania: The gentleman from Virginia admitted yesterday that this was permanent legislation.

Mr. Montague: Mr. Chairman, with all due respect to the gentleman from Pennsylvania, he does not quote me correctly. I admitted, so far as that particular paragraph was concerned, that it would meet similar conditions hereafter arising, but it is apparent that the bulk of this act ipso facto dissolves when the war ends.

Mr. Moore of Pennsylvania: I took the gentleman at his word yesterday, that the bill provided for such future wars. That was the very question raised. I took the word of the gentleman as a lawyer, and understood from his statement that this was to be permanent legislation to meet the future as well as the present emergency.

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Mr. Montague: Either the gentleman from Virginia [Mr. Montague] or the gentleman from Pennsylvania [Mr. MOORE] was very unfortunate in expression or in understanding.

Mr. Hill: Mr. Chairman, it is already admitted, both upon the part of the committee and on the part of other Members of the House that the real scope of this bill is not clear. I want to say to you that its scope and extent is not understood or comprehended. No man thought two years ago that the United States would be sending, as the

President says we may possibly do now, millions of its citizens, the best blood of America, to fight in the battle fields of Europe. You can not tell where this thing is going. To-day there is far more likelihood of covering other nations than those now engaged in the war under the provisions of this bill than I think the committee ever realized or expected. I say that we ought not to duplicate these things.

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Mr. Hill: In my opinion this legislation goes too far. I say that it overlooks what is going to occur after the war. We have got to have capital from citizens of foreign nations interested in all forms of industry here, in the future just as we have had it in the past. This bill is not a question between government and government. It is a question of men who have come here honestly and loyally and faithfully and invested private funds, and this bill practically says that we will confiscate those funds, and that we will use them for our purposes. I have not any objection to that, but it adds that when the war is over we will leave it to the disposition of Congress as to whether we will pay it back or not. I do not believe that is honest, gentlemen. I do not believe this Government can afford to be dishonest, and I do not believe the terms of this bill are honest.

The Chairman: The time of the gentleman has expired.

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The Chairman: Without objection, the gentleman will be permitted to modify the amendment, and the Clerk will report it as modified.

The Clerk read as follows:

Amendment offered by Mr. Lenroot: Page 30, line 19, after the word "enemy," insert:

"Resident within the territory, or a subject or

citizen residing outside of the United States, of any nation with which the United States is at war, or resident within the territory, or a subject or citizen residing outside of the United States, of any ally of any nation with which the United States is at war."

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So the amendment was agreed to.

Mr. Lenroot: Mr. Chairman, I have one other amendment.

The Chairman: The gentleman from Wisconsin offers an amendment, which the Clerk will report.

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Mr. Hill: Mr. Chairman, I hope the committee will accept that amendment. I can see no possible harm if it is adopted, and I can see much harm to come from the language of the bill as it now stands. My view in regard to that has been greatly strengthened by a remark made to me a few minutes ago by a Member of the House with regard to the cotton claims in the South. He tells me that from service on the committee he found that during the Civil War the proceeds of some of the captured cotton, to a considerable amount, were deposited in the Treasury of the United States to the credit of the owners, and that there had been little or no trouble in the adjustment of these claims and the refunding of that money. But he said there has been a great deal of trouble when the funds were merged with other funds and no distinguishing record kept of them.

The same is true in regard to the French spoliation claims. What I am afraid of is that the sanctity of private property is going to be swept away and destroyed, as it has been in mediæval times in the past, long before The Hague conference declared in favor of it, and that we are going to go into a system of retaliation, the taking of private property of individual owners in the adjustment

of lump-sum disagreements of governments after the war is over.

I can see no possible harm to come to anybody from this amendment. We do not want to rob people of their property. We want to be honest with them, and we are the last ones in the world to go into a war for the maintenance of treaty rights because treaty rights have been abrogated by the enemy, and to begin now to set an example for the first time of breaking such treaties.

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Mr. Fess: As I understand the gentleman's desire, it is to so secure the private-property owner that the presence of war will not deprive him of any right.

Mr. Hill: Absolutely. We admit the right and powers specified in the bill of the Government to take that money and use it in its own way, to use it for a vigorous prosecution of the war against Germany, which I am in favor of, to invest it and reinvest it; but somewhere, somehow, we should make a declaration that this property of private citizens who, certainly in Germany, no matter whether here or anywhere else, have no power to begin or close this war, shall be held as a sacred trust by somebody to use it in any way we will, but in some way or other and somehow we should declare now that we will pay it back.

I feel just as Robert Ingersoll once said in regard to certain claims when he came before Congress: "For God's sake settle, if you never pay a cent." I want to be honest in the beginning whether we are honest in the end or not.

Mr. Fess: Can the gentleman conceive of a contingency arising where the United States would not want to make good an obligation that a citizen of the United States held to a foreign citizen?

Mr. Hill: It has never been done in the past. It has always been done the other way. Before The Hague conference said that private property or land should be

sacred from confiscation in time of war, the Government has claimed those debts and swapped them; and if a citizen could get it back, well and good. I want to see that stopped. Does the gentleman from Ohio know of a reason why we should not make this declaration now?

Mr. Fess: I do not.

Mr. Hill: If we are going to make it by and by, after the war is over—

Mr. Fess: I will say to my friend that I do not; but I was wondering whether there was a contingency possible.

Mr. Hill: Does the gentleman know of a case in the history of the past—

Mr. Fess: I do not.

Mr. Hill: Where this has been done? Let us set a new example to the world of a straightforward declaration of what we intend to do. We were a signatory to The Hague conference. What if other countries do not agree to it? Should we refuse to pay our private debts because other people do not pay theirs? I hope the committee will accept this amendment.

Mr. Esch: Mr. Chairman, the gentleman from Connecticut [MR. HILL], in the course of his argument, seemed to intimate that this money paid in to the custodian and by him paid into the Treasury of the United States will be placed in jeopardy. I have no such fear. When that money is paid in to the custodian and paid in to the depository, or such other person as the President may direct, an acquittance is given by a Government official to the party paying, indicating that the Government of the United States received on such and such a date such and such an amount of money. That in itself practically impresses the money so received with the character and nature of a trust fund.

There is another feature, and it is the practical side of it, which seems to me to be insurmountable, when you

consider that there may be thousands and thousands of these amounts coming in. Under the amendment suggested by the gentleman there must be separate accounts kept of every single item that is paid in to the custodian. It may be \$50 by way of interest, \$75 by way of dividends on a transaction, and yet this must be segregated, must be kept separate and apart, and a distinct account kept of every one of these items. Why, you would have to have an army of clerks, in my humble judgment, to take care of the business should the amendment of the gentleman prevail.

Mr. Hill: Mr. Chairman, just one word in reply. As to the question of accounts, it is matter, in my judgment, of no importance. We have just issued a loan of \$2,000,000,000, and we have from three to four million subscribers to that loan. We have to keep those accounts. The gentleman says that thousands and thousands of these accounts will have to be kept. Why should we not keep an account of the money that we take and keep without paying any interest on, or anything of that kind?

Mr. Mann: Mr. Chairman, will the gentleman yield?

Mr. Hill: Certainly.

Mr. Mann: Does the gentleman think that the Treasury intends to keep a separate account of each individual owning a bond?

Mr. Hill: I think the Treasury has to keep an account with each individual—

Mr. Mann: Oh, no.

Mr. Hill: Practically. They have to keep it by the number of every bond that they have.

Mr. Mann: The gentleman knows that no separate account is kept with individuals.

Mr. Hill: In the sense in which bookkeeping is done, no; but a register of every single bond is made, whether \$50 or \$100 or of a \$1,000 bond. There is no trouble about that; if there is, we can afford to do that. If we take away

a man's money, if we have the use of it during the war without compensation to him, we can afford to do that. If the transaction that we are entering upon is so great, we ought to enter upon it with double care. It has to be kept, anyhow. The gentleman sitting by my side properly suggests that if it is taken by the custodian there will have to be a record made of it. If such a record is not made, how is proof of ownership to be established? It seems to me it is a simple matter. If we are going to adopt a policy of this kind, it is a simple matter to so arrange that the accounts shall be kept properly.

It is simply a record of the receipt of so much money from such and such a person. Then there is no trouble about the proof of the ownership in the end, and that is all there is to this, and I feel that we ought to make a full declaration now.

The Chairman: The time of the gentleman has expired.

Mr. Stafford. Mr. Chairman, I ask unanimous consent that the gentleman may have two minutes more in order that I may ask him some questions.

The Chairman: Is there objection to the request of the gentleman from Wisconsin? [After a pause.] The Chair hears none.

Mr. Stafford: As I understand, if we would not pass this act, then the contractual obligation requiring the payment of money back to the creditors would merely be suspended during the pendency of the war?

Mr. Hill: That is right; and the Government would have the use of it.

Mr. Stafford: And at the conclusion of the war the creditor could begin suit in our own courts.

Mr. Hill: He could make a claim on the Treasury, if my amendment is adopted.

Mr. Stafford: I am assuming if there be no such provision carried in this bill.

Mr. Hill: That is right.

Mr. Stafford: As we are invalidating in a way the rights of the alien property owner, why should not we in all fairness guarantee him the payment of the money, because international law does not recognize the abrogation of property rights of citizens of a belligerent; it merely suspends the collection of them.

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Mr. Mann: I assume it will appear as money held in trust by the United States for this purpose. Now, there is no money in the Treasury of the United States, no matter what gentlemen may sometimes say on the floor of the House, which belongs to somebody else. We hear about cotton taxes and various things of that sort. All funds in the United States Treasury which were held for the benefit of individuals growing out of contracts during the war were paid out to those people shortly after the end of the war, and undoubtedly will be done in this case unless it should happen, which I do not think at all likely, that in making the treaty of peace we should make a trade off with the German Government, which I do not think we are likely to do so far as these accounts are concerned. We keep a record and that is all that is necessary.

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Mr. Montague: That brings us abruptly to this conclusion, namely, it is unquestionably the purpose, and the wise purpose, of this Government—and, in my judgment, the inexorable duty of this Government—to see that this property is so held that it can be available for consideration and disposition when the treaty of peace is entered upon. If we take the property and hold it in trust for each individual, then the question of offsets or cognate

questions that may arise in the final negotiations will be immensely curtailed if not forbidden.

I concur with the gentleman from Connecticut [Mr. Hill] in appreciation of the honesty of our Government. I have not the slightest apprehension that we will deal dishonestly. Moreover, in my judgment, the property taken over by the Government, so far as individual claims are concerned, will not only be held by a more solvent stakeholder than if it be left in the hands of the debtor, but it will perhaps thereby be more available for the enemy creditors.

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Mr. Moore of Pennsylvania: Mr. Chairman, I am in favor of the amendment offered by the gentleman from Connecticut [Mr. Hill]. I believe that if citizens of the State of Texas, for example, invited citizens of the State of Pennsylvania to make investments in Texas, and those investments were made in good faith, and a state of war should break out between the two States, the property rights of those investors should be preserved. By the same token, if citizens of Germany, in good faith and at a time when we were at peace with Germany, upon invitation from citizens of the United States, made their investments in this country, we should preserve the property we take from them during the existence of a state of war, and hold it so that the ownership might be properly determined at the close of the war. We have the use of their property meanwhile; in fact, we use it temporarily for the benefit of the United States.

It seems to me the gentleman from Connecticut, apart from the technical and legal or international questions raised by others, is morally right, and that it would do no harm to establish a precedent based on honesty, even if there be no international law to sustain it.

Long before the United States entered this war it was

actually suggested by certain persons in interest in this country that we should take out of certain warehouses goods deposited there by German merchants and appropriate them to our own use.

As there was no state of war then existing, that proposition at that time seemed to be an immoral proposition. It looked to me a little short of highway robbery. It meant to take away from a man property which he had intrusted to us in good faith and which for the time being we had agreed to protect.

Mr. Gordon: Mr. Chairman, will the gentleman yield?

Mr. Moore of Pennsylvania: Yes.

Mr. Gordon: You also heard it advocated by a very prominent citizen of the United States that these foreign ships that were interned here should be seized by the Government.

Mr. Moore of Pennsylvania: I think they were seized.

Mr. Gordon: Before the declaration of war?

Mr. Moore of Pennsylvania: Oh, no; after the declaration; but it was proposed that we take them over and appropriate them to ourselves before the declaration of war.

Mr. Gordon: Certainly—

Mr. Moore of Pennsylvania: When we had no legal or international right to do so. That was not the real American spirit. We should preserve our own morale, even though we are at war with Germany. If an American citizen was doing business in good faith with Germany before the war and has property over there at the present time, I presume we would expect Germany to hold it so that the American citizen at the conclusion of the war at least could put in a plea and recover it. That is what the Hill amendment means, if I understand it.

* * * * *

The Clerk read as follows:

Amendment offered by Mr. Rogers: Page 43, line 1, after the word "companies," insert "or in the case of tangible personal property, other suitable depositary or depositaries."

Mr. Rogers: Mr. Chairman, this bill provides that the alien-property custodian shall have intrusted to him not only intangible personal property but also tangible personal property. At the bottom of page 42 is the provision that he may, under the direction of the Secretary of Commerce, deposit the property intrusted to him in any bank or banks or in any trust company or trust companies.

The bill clearly contemplates that he will have in his hands, and will have to dispose in some suitable way of, tangible personal property also. A bank or trust company is obviously not a natural place for the deposit of tangible personal property. In proposing this amendment I am simply seeking to give effect to the clear intent of the law by allowing the Secretary of Commerce to designate other suitable depositaries in the case of tangible personal property.

Report of Committee.

BEFORE THE U. S. SENATE.

TRADING WITH THE ENEMY ACT.

The Senate Committee on Commerce had the proposed legislation under consideration for some time and heard the statements of representatives of the several executive departments which collaborated in its preparation. The report was submitted by the Senate Committee to the Senate on August 15, 1917. The report states that the Committee had devoted more than a month to the careful and painstaking consideration of the bill, during which it had the benefit of the report made by the House Committee on Interstate and Foreign Commerce. Among other things, the report of the Senate Committee on Commerce says:

“The purpose of this bill is to mitigate the rules of law which prohibit all intercourse between the citizens of warring nations, and to permit, under careful safeguards and restrictions, certain kinds of business to be carried on. It also provides for the care and administration of the property and property rights of enemies and their allies in this country pending the war. The spirit of the act is to permit such business intercourse as may be beneficial to citizens of this country, under rules and regulations of the Secretary of Commerce, which will prevent our enemies and their allies from receiving any benefits therefrom until after the war closes, leaving to the courts and to future action of Congress the adjustments of rights and claims arising from such transactions. Under the old rule warring nations did not respect the property rights of their enemies, but a more enlightened opinion

prevails at the present time, and it is now thought to be entirely proper to use the property of enemies without confiscating it; also to allow such business as fire insurance, issuance and use of patents, etc., to be carried on with our enemies and their allies, provided that none of the profits arising therefrom shall be sent out of this country until the war ends.

“The bill next provides for the power of the Government to deal with enemy property so as to conserve and utilize such property found within its jurisdiction so far as practicable, both in the interests of this Government and of the enemy owner. The general provision is made that the Government may require any form of enemy property found within the United States to be paid or conveyed to the alien-property custodian, and any person holding enemy property in this country is given the option, with the consent of the Secretary of Commerce, to transfer such property into the hands of the Government.

“The most novel and important feature of this portion of the bill is the requirement that all money and quick assets paid over to the Government shall be invested in United States bonds. So far as known this is an entirely new provision, contained in no previous statute. It is in line, however, with the modern and advanced lenient policy with reference to private property in time of war. By this means, enemy property is temporarily conscripted by the Government to finance the Government through investment in these bonds, and to be paid back to the enemy or otherwise disposed of at the end of the war, as Congress shall direct. In other words, we fight the enemy with his own property

during the war but we do not permanently confiscate it. This temporary conscription of enemy property is also conservation of enemy property, for it takes the property from the hands of debtors or agents, as to whose solvency the enemy would otherwise be obliged to assume the risk, and it invests the property in the safest security in the world—bonds of the United States—or deposits it in Government depositaries.

“Section 11 contains provisions for the preservation of enemy property by governmental agency and in the interest of the enemy himself. The chances of trade in time of war may involve the solvency of debtors or holders of enemy property, but the taking over and custody of the property by the Government gives to the enemy the best possible protection.”

TRADING WITH ENEMY ACT.

HISTORY OF BILL ON FLOOR OF SENATE.

Recommitted to Senate Committee on Commerce, August 30, 1917 (H. R. 4960).

Report submitted to Senate from Committee on Commerce, Report No. 131, and placed on Calendar August 31, 1917.

Report came up for consideration and passed for the day, September 11, 1917.

Bill taken up by Senate, and House amendments agreed to on report of Mr. Ransdell from Committee of Commerce. Entire morning occupied solely with parliamentary arguments.

(*Congressional Record, September 11, 1917.*)

UNITED STATES SENATE, SEPTEMBER 11, 1917.

TRADING WITH THE ENEMY.

Mr. Fletcher: "Mr. President, I move that the Senate proceed to the consideration of the bill (H. R. 4960) to define, regulate, and punish trading with the enemy, and for other purposes."

The debate on the floor of the Senate took place September 11th, 1917, and occupied several hours, mostly devoted to the insurance features of the act. It fills ten pages of the Congressional Record of that date, almost all of which is of a technical character concerning proposed amendments to that feature of the proposed law, and can be found on pages 7563 to 7572, Congressional Record of the above date.

In behalf of the Committee:

Senator Vardaman (Cong. Rec., p. 7023, Sept. 12, 1917): "Mr. President, this bill was constructed by the sub-committee with the assistance of representatives from four departments of the executive branch of the Government. The Secretary of the Treasury was with us and contributed his wise and sagacious suggestions. The Secretary of Commerce, with his ripe experience in matters of legislation, also contributed to the construction of the measure. The attorneys from the Department of Justice and a representative from the Department of State were also there. We labored assiduously for weeks upon this bill and endeavored to meet every phase and meet every condition or contingency that might arise. We have the advantage of the bill passed by the House with ripe thought and mature consideration of that distinguished body."

* * * * *

"After it was finished I was rather proud of what somebody else had accomplished, with myself trailing along. I

wish that it might pass the Senate as it came from the committee free from all irrelevant and impertinent amendments."

Same day and hour; bill read third time and passed and went to Conference Committee of both Houses.

On September 24, 1917, the conference report was received by the Senate and discussed (see Congressional Record, September 24, 1917, pages 8047-8059, that date). This latter debate was mostly devoted to a discussion of the transmission of letters and information during the war period.

* * * * *

UNITED STATES SENATE.

Congressional Record, May 15, 1920, Page 7664.)

TERMINATION OF THE WAR WITH GERMANY.

The Senate, as in Committee of the Whole, resumed the consideration of the joint resolution (H. J. Res. 327) terminating the state of war declared to exist April 6, 1917, between the Imperial German Government and the United States, permitting on conditions the resumption of reciprocal trade with Germany, and for other purposes.

* * * * *

Mr. Pomerene: It is argued, with very great force, that if the Congress of the United States has a right to pass a resolution it has a right to rescind or repeal it. With the general proposition I am in entire accord, but it cannot change vested rights; it cannot change conditions with regard to property or the status of individuals acquired during the state of war. In my judgment, this is not a resolution to rescind the war resolution; it is an attempt by legislative act to create a treaty.

Let us see what it is. Stripped of its legal phraseology,

it provides, first, for the repeal of the resolution declaring a state of war; second, it declares the state of war ended; third, it provides that all property of Germany and German nationals which has come into the possession of the United States or its agents shall be retained and not be disposed of, except as Congress may hereafter provide, until Germany and the United States by treaty make provision for the satisfaction of all claims against the German Government subsequent to July 31, 1914, and until the German Government by treaty undertakings grants to citizens of the United States the most-favored-nation treatment in all matters affecting residence, business, trade, navigation, commerce, and industrial property rights; and, fourth, it confirms all fines, penalties, and seizures imposed or made by the United States, and compels Germany to waive all claims based upon events before said treaty takes effect, notwithstanding any existing treaty to the contrary. The President is then directed to open negotiations for the purpose of entering into a treaty.

I understand that a motion has been made to strike out the last provision; but, nevertheless, the effect of the resolution, if it is passed, is to depend not upon action of the Government agencies of the United States but is to depend upon some action of our enemy, the German Empire.

Mr. Oppenheim, in his work on International Law, in Section 498, says:

A treaty being a convention, mutual consent of the parties is necessary. Mere proposals made by one party and not accepted by the other are, therefore, not binding upon the proposer.

And I take it, it makes no difference whether they are made by the Congress of the United States, acting in its legislative capacity, or by the President and the Senate,

acting in their capacity of negotiator and ratifiers of treaties.

Then the author adds:

Without force are also pollicitations which contain mere promises without acceptance by the party to whom they were made.

That is exactly what this resolution is; but the resolution goes further even than I have thus far suggested. It provides:

Sec. 3. That until by treaty or act or joint resolution of Congress it shall be determined otherwise, the United States, although it has not ratified the treaty of Versailles, does not waive any of the rights, privileges, indemnities, reparations, or advantages to which it and its nationals have become entitled under the terms of the armistice signed November 11, 1918, or any extensions or modifications thereof or which under the treaty of Versailles have been stipulated for its benefit as one of the principal allied and associated powers and to which it is entitled.

Strange as it may seem, this is our position: While it is true that a treaty has been negotiated, it has not been ratified by the United States Senate; it has therefore—at least it was not so supposed until this proposition was made the other day—no binding effect upon the Government of the United States or its nationals, because it has failed of ratification. It is a mere pending proposition; and yet we are asked to pass a resolution by the terms of which we accept all the benefits that are to be derived from the treaty without undertaking any of its obligations.

Mr. Knox: Mr. President—

Mr. Pomerene: I yield.

Mr. Knox: I know the Senator from Ohio does not desire to be inaccurate.

Mr. Pomerene: I certainly do not.

Mr. Knox: The resolution does not accept any benefits under the treaty of Versailles; it simply does not waive any of those benefits until a satisfactory adjustment can be made.

Mr. Pomerene: I realize that.

Mr. Knox: I understood the Senator to say that we accepted the benefits under the treaty.

Mr. Pomerene: That may be true, and I thank the Senator for the correction, but I fail to find any very great distinction between the two, speaking from a legal or constitutional standpoint.

Mr. Knox: The distinction is simply this: The Senator, with his great legal ability, will at once accept the proposition that, even though a nation or an individual may not be a party to a contract, yet if there are stipulations made in a contract for the benefit of a nation or an individual, that nation or individual may accept them if it or he sees fit. The treaty of Versailles is full of stipulations of that kind for the benefit of countries that were not belligerents at all; and the whole scope of the resolution is to hold in statu quo whatever rights we might be entitled to have as against Germany, under the treaty of Versailles, until we have adjusted our relations.

Mr. Pomerene: Oh, I realize that; but we are holding this property which has been seized during the exercise of the war powers of the country, and we are claiming, for the time being at least, a possessory right. At least, we are denying to the enemies with whom we are seeking to make peace their right to the possession thereof. In other words, we are accepting the benefits of a treaty

which we have refused to ratify and which therefore is not a treaty, so far as the United States is concerned.

Mr. Reed: Mr. President, I do not want to interrupt the Senator if it is at all disagreeable to him.

Mr. Pomerene: I would a little rather follow my own argument. However, I yield for a question.

Mr. Reed: Just what is the matter with that, just as stated by the Senator, just as baldly as he has stated it? What is the matter with the proposition? If we had a war with Germany, and they injured us, and we have some of their property, and we have arrived now at a period when the war is ended—

Mr. Pomerene: If the Senator will pardon me—

Mr. Reed: Let me finish the sentence.

Mr. Pomerene: Very well.

Mr. Reed: If we say, "Now, the war is ended, and we are going to declare it an end, but in doing that we do not waive our right to this property; that is a matter that remains to be settled in the future, and we except it specifically in order that it may not be treated as having been included under the general clause," what is the matter with that?

Mr. Pomerene: Mr. President, I shall not take the time to answer the Senator in full at the present time, but will answer more fully later; but, so far as I am personally concerned, I decline to be put in the position that I am making peace and then insisting on having property and rights which will be subject to serious dispute and negotiation at some future time. In other words, I refuse to be put in a position where I will give to the enemy, if I have the right and the power to give to them, the thing which they want above everything else, renewal of commercial relations, and leave the most troublesome propositions for negotiation and settlement thereafter.

* * * * *

Mr. Kellogg: Suppose the treaty were to be ratified tomorrow by the Senate and published by the President, is it not true that the Congress the very same day could repudiate it and decline to make peace on the terms named in the treaty?

Mr. Pomerene: As a general proposition, yes; but let me remind the Senator that the word "treaty," as we understand it, is entirely different from what it is usually understood to be in international law. The treaty, so far as it defines the rights of our people, is a law. The Constitution makes it a part of the supreme law, but when it defines the relations between the United States of America and Germany it is a contract.

* * * * *

Mr. Reed: Does the Senator maintain that there can not be a status of peace unless there has been a signed agreement?

Mr. Pomerene: Mr. President, there can not be any difference between the distinguished Senator and myself bearing upon that subject. Of course, there can be a *de facto* peace.

Mr. Reed: It can be a *de jure* peace, too.

Mr. Pomerene: That may be so, but it will be a *de jure* peace when it has been acquiesced in for so long a time—and I am not clear about that—as to cast aside all doubt. It is a *de jure* peace when the proper body declares and makes and negotiates and ratifies that peace, and not before.

Mr. President, let us go along a little further with this matter. In my humble judgment the distinguished Senator from Pennsylvania [Mr. Knox], when he seeks to preserve all rights, or privileges, if you choose, which are to be given to us under the Versailles treaty, and when he suggests that there shall be a negotiation for a completed treaty, clearly proves that this resolution is not of

itself, sufficient to settle all the terms of the disputes between the two nations.

Then, Mr. President, let us go a little further. I was very much interested in the Senator's argument when he tried to prove that there was a peace, that Germany is at peace with the United States, and that peace, according to the distinguished Senator, comes about because under Article 440 of the treaty of peace we find this:

A first procès-verbal of the deposit of ratifications will be drawn up as soon as the treaty has been ratified by Germany, on the one hand, and by three of the principal allied and associated powers, on the other hand.

And then the treaty further provides:

From the date of this first proces-verbal the treaty will come into force between the high contracting parties who have ratified it.

We have not ratified it at all. Then it further provides:

For the determination of all periods of time provided for in the present treaty this date—

that is, the date when the procès-verbal is deposited—

will be the date of the coming into force of the treaty.

Because there are dozens and dozens of provisions in this treaty to the effect that certain things shall be done or accomplished by the German Empire within a given number of days or years after "the coming into force of the present treaty."

Then, wonderful to relate, while he has gone to very great pains to demonstrate that Germany is at peace, "as of the date of the deposit of the ratifications by Germany and by three of the principal allied and associated

powers," he provides that the date of the passage of the pending joint resolution shall be the date when we shall be at peace. I do not understand that argument.

But now, Mr. President, let me direct the Senator's attention to another feature of this case. In 1785 the treaty of Prussia was negotiated and ratified. Article 23 of it reads as follows:

If war should arise between the two contracting parties, the merchants of either country then residing in the other shall be allowed to remain nine months to collect their debts and settle their affairs, and may depart freely, carrying off all their effects without molestation or hindrance; and all women and children, scholars of every faculty, cultivators of the earth, artisans, manufacturers, and fishermen, unarmed and inhabiting unfortified towns, villages, or places, and in general all others whose occupations are for the common subsistence and benefit of mankind, shall be allowed to continue their respective employments, and shall not be molested in their persons, nor shall their houses be burnt or otherwise destroyed, nor their fields wasted by the armed force of the enemy into whose power by the events of war they may happen to fall; but if anything is necessary to be taken from them for the use of such armed force, the same shall be paid for at a reasonable price.

This treaty by its terms was to continue for 10 years. In 1799 another treaty of amity and commerce was negotiated. It expired 10 years later, on June 22, 1810.

A new treaty of commerce and navigation was ratified in May, 1828. Article 13, above quoted, was in substance incorporated in the new treaty.

But there is this significant provision in the last treaty:

If war should arise between the two contracting parties, the merchants of either country then residing in the other shall be allowed to remain nine months to collect their debts and settle their affairs and may depart freely, carrying off all their effects, without molestation or hindrance.

That provision was practically the same as in the earlier treaty. Then, in the treaty of 1828, known as the new treaty of commerce and navigation, there is the further provision that by its terms this treaty is made "applicable in time of peace as well as in time of war."

The provisions to which I have referred have been re-incorporated into the last treaty, and it was made self-continuing, and it has at no time been denounced.

Of course, we cannot say what the effect of this war is going to be on these treaty obligations. Our courts can not determine that. German courts can not determine that. That is a question to be determined by the belligerents themselves by negotiation; and if they can not agree, then it must be determined by some court of arbitration or a league of nations, if you please; and if it cannot be determined in either one of these ways, then the only other way to determine it is by the arbitrament of the sword.

In spite of the provisions of these Prussian treaties, our Government seized German property in the United States and the German Government seized American property in Germany, the property of nationals as well as of the Governments themselves. All of those questions will rise up like Banquo's ghost if you pass a joint resolution of this kind.

By this joint resolution it is claimed that we are bringing about peace; in other words, we are restoring a condition which was the excuse for our seizing this property. Assuming for the sake of argument that this joint reso-

lution should pass and should be approved by the President, if we are to give it the construction which is sought to be placed upon it by the distinguished Senator from Pennsylvania, war, which was the excuse for our seizing alien property, is at an end. There is not only a *de facto* peace but a *de jure* peace.

Who is going to determine the title to this property? Our courts? Who is going to determine the title of American nationals in Germany to their property? Let us see: The resolution is passed. All of this property is held in nubibus. How are we to determine its ownership and the countless claims for indemnity?

Commercial relations are restored. Germany is getting from us all the raw materials and other supplies that she wants. She is not very much disturbed about making speedy reimbursement for the wrongs she has done the American people. By passing the resolution we are giving them all they want, because that is what it means, and we will thereby defer the settlement of the question of their indemnity to our nationals for a future time.

Mr. President, I confess I do not see how it can be claimed for a minute that we have any rights or any privileges, personal or property, under the Versailles treaty until we ratify it. In my humble judgment that question is not open to dispute or discussion, and it would not have been thought of here save for the fact that there has been some difference between the Executive and the Senate of the United States.

* * * * *

What else can be done? The other alternative is that it be approved. Then what have we got? Have we got a real repeal of the joint resolution? And if so, what is it? Bear in mind, please, that the resolution which was passed on April 6, 1917, was not a resolution declaring war. There

already was war against the United States, war made by Germany. All the Congress of the United States did was to pass a resolution declaring solemnly that there was a state of war brought on by the aggressions of Germany.

Then what have we done? We have simply repealed a resolution which was a formal declaration that there was a state of war. It is true that the resolution goes a little further and declares that there is a state of peace. I do not believe that Congress would be guilty of a much greater violation of the Constitution if they themselves sought to negotiate the peace than to declare peace on the terms contained in this joint resolution with all conditions and reservations contained therein.

Then think of the situation. The distinguished Senator from Wisconsin [Mr. Lenroot] the other day in his colloquy with the Senator from Pennsylvania [Mr. Knox] did not agree with him that the passage of the joint resolution would bring on a state of peace, so far as our nationals in Germany were concerned. Of course it could not. We can not by our legislative action declare a status for the American nationals in Germany any more than they by some law can declare a status for their nationals dwelling in the United States or describing the status of their property.

But now we are put in this position under the joint resolution. We make a proposition to them for a state of peace; we keep the property of their Government and their nationals; but this is contingent upon the German Parliament doing something akin to it; in other words, we are going to place within the two legislative bodies of the two different countries the power to make and to ratify the peace treaty.

Let me go a step further, because this raises a very serious constitutional question. Has the Congress, by a bare majority, the right to declare the status of this prop-

erty, what indemnities they shall pay to us, and do all of this in a way that will be absolutely binding upon our nationals who have suffered losses and upon our Government? Are they not interested in it? Of course they are, and for this reason. Bear in mind, and I think there can be no doubt about it, that this proposed action at least relates to the treaty-making power, but the constitutional fathers in their wisdom provided in the Constitution that a treaty should be negotiated by the President, and that it should receive the advice and consent of two-thirds of the Members of the Senate voting thereon. When you have a treaty passed in that way, as declared by the Constitution of the United States, it is part of the supreme law of the land. It is enforceable in our courts as a law of the land. In our relations with Germany it is a contract. The treaty-making power by a two-thirds vote might give to our nationals certain rights and impose certain obligations, but the Congress by a bare majority vote might confer other rights and impose other obligations. Would not this course raise a very serious controversy as to whether what was done by the Congress was a valid act or not when it related to the property and personal rights or obligations of German nationals here or of our nationals in Germany?

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That Congress may repeal all the legislation it enacted for the successful prosecution of the war, the trading-with-the-enemy act, the food-control act, for example, I dare say no one will deny. Such, I understand, to be one of the purposes of the resolution, and particularly of Section 2 thereof. But certain important consequences flow from a plain declaration of war such as the historic resolution of April 6, 1917, though no specific statute were passed interdicting trade with the enemy. All intercourse between the belligerents becomes illegal.

Every kind of trading or commercial dealing or intercourse, whether by transmission of goods or orders for the delivery of either between the two countries at war, directly or indirectly, or through the intervention of third persons or partnerships, or by contracts in any form looking to or involving such transactions, is prohibited. It follows that every contract by the nationals of one belligerent with the other or with the nationals thereof is void and will be so treated by the courts. Property that is the subject of any such contracts or that is used in carrying on contraband trade may be seized by either belligerent, but unless there is in effect some specific statute, such as the trading-with-the-enemy act, no penal consequences follow, so far as the United States is concerned.

I take it that the effect of the resolution, if it becomes a law, will be not only to bar any criminal prosecution on account of intercourse with the public enemy or its nationals but to remove all danger of confiscation of any property involved, and to give validity to any contracts growing out of such intercourse—rather to remove the taint of invalidity which would otherwise affect them in consequence of the declaration of war. That such action is within the power of Congress, the President approving, or his veto being rendered nugatory, can not, as I think, be seriously questioned. It can not be open to serious doubt that limited intercourse with the public enemy may be permitted, even in the midst of hostilities, by act of Congress which may prescribe the conditions under which such trade as is tolerable may be carried on. It was so held in *Hamilton v. Dillin* (21 Wall., 73). If limited intercourse may be permitted unrestricted trade may necessarily be authorized. And if inter arma unrestricted trade may be authorized, there is no room to contend that when all hostilities have ceased there is any constitutional objection to such legislation.

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Whether Congress, having once declared war and thus authorized the President as Commander in Chief to conduct hostilities at his discretion against the enemy, may by a resolution repealing such declaration before a treaty of peace becomes effective deprive him of the power to wage war upon the foe, through such forces and by such means as are at his command, it is entirely unnecessary to consider. No such condition is likely now or ever to arise.

But this resolution, if the expression be parliamentary, is economic idiocy. We give everything and get nothing. We abolish all restrictions on the importation into this country of goods bearing the "made in Germany" trademark without any agreement with that country that she will admit all or any of ours into her territory. We invite the representatives of the commercial houses of Germany again to overrun our cities, while she is at liberty to shut her gates on any American merchant, manufacturer, or banker, on our growers of cotton, corn, and live stock, our producers of copper, who may desire to deal with her people. We permit the re-establishment in our midst of the industrial plants that prior to the war enriched so many of her war-mad minions, and that became centers of sedition and disloyalty after we entered it, without any assurance that an American firm may even set up an agency in the city of Hamburg. We throw open our ports to emigrants from her impoverished States and Provinces and admit them to citizenship on exactly the same terms as are accorded to the citizens of our faithful Allies or the liberated people of the new Republics we have aided in creating within her former territory without any guaranty that an American may remain overnight in a hotel in Munich, Dresden, or Berlin.

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Mr. Reed: Does the Senator think that the old treaties with Germany will be revived and repealed by virtue of this mere declaration that the war is at an end? On the contrary, are not all those treaties dead? Do they not require a new act?

Mr. Walsh of Montana: The Senator wants one thing at a time. Those treaties are not dead. The Supreme Court of the United States has decided over and over again that treaties do not die by reason of the fact that the parties to them enter into a war.

Mr. Reed: They undoubtedly die as far as any rights of the parties to enter another country are concerned. Now, does the Senator claim that Congress can not pass this joint resolution and to-morrow, by any act that it sees fit to pass, enumerate the terms and conditions upon which Germans can enter?

* * * * *

Mr. Walsh of Montana: I am undertaking to deal with both of those questions. I have undertaken to show that the repeal of the declaration of war removes the taint of invalidity upon every contract that may be entered into with German nationals. The repeal of the specific acts takes away all the penal consequences of intercourse with Germany in violation of such statutes.

Mr. Reed: The Senator knows that we have restored trade with Germany?

Mr. Walsh of Montana: Yes; I am going to talk about that.

Mr. Reed: And that it is going on right now, practically unrestricted?

Mr. Walsh of Montana: Yes; I shall discuss that presently. I shall be glad to give the Senator the exact facts and the exact figures.

I was discussing, Mr. President, the one-sided character

of this proposition when interrupted by the Senator. I continue.

The resolution must be construed as in the nature of an invitation to her to send consular agents to our cities to promote her trade here, with the assurance that the appropriate exequatur will be issued to them, under which they will enjoy not only the right to officiate as authorized by their government, but be entitled to the privileges which attach to a representative of a foreign state; among others, the sanctity of his official residence and exemption from suit in any State Court and the right to invoke the original jurisdiction of the Supreme Court. We must depend upon the friendly disposition of Germany to accord a similar hospitality to our consular and commercial agents.

The resolution provides that all property of Germany or its nationals seized by the United States shall be retained until, by treaty, Germany makes provision to indemnify American citizens for all losses sustained through her acts since July 31, 1914, which treaty shall contain the usual favored-nation clause and shall confirm to the United States all fines, forfeitures, penalties and seizures imposed or made by the United States during the war.

* * * * *

The resolution holds out to Germany the hope that by discharging her obligations to our people she may recover the property we took from her during the war, and then affixes a condition with which it is impossible for her to comply. The President is called upon, not expressly, as the resolution now stands, but impliedly, to negotiate a treaty with Germany which he knows and must know it is impossible for her to observe.

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Mr. Knox: Did not the President of the United States on at least two occasions, and on each occasion by two or

three different methods of expression, each one stronger almost than the other, say that the war was at an end; that Germany had been destroyed; that she was unable to renew hostilities, and that all of the purposes of the war had been accomplished?

Mr. Underwood: I am not trying the case on the statement of the President, and I do not think that is conclusive of the matter; but I am sure that the Senator from Pennsylvania himself will not insist that we have arrived at a state of peace by the subjugation of Germany in the sense that is used by the text writers from whom he quotes. Subjugation in that respect means the destruction of the government, making the people of the conquered territory absolutely subject to the will and control of the conquerer. That has not been done in Germany.

Mr. Knox: Mr. President, if the Senator will allow me further, I do not want to interfere with the course of his argument—

Mr. Underwood: I am glad to have the Senator interrupt me.

Mr. Knox: But I wish to call his attention to the language of the armistice, which the President read to us and commented upon; that all hostilities on land, in the air, and on the sea were terminated, and all of the instrumentalities of war which pertained to the conduct of the war upon the land and in the air and upon the sea were surrendered to the belligerent forces that were attacking Germany.

If the Senator will permit one more sentence, I think the Senator from Alabama fails to discriminate between the fact of peace and the terms upon which we propose to arrive at peace, which are the usual functions of a treaty.

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Mr. Harding: Mr. President, I listened with a great deal of interest to the remarks of the Senator from Alabama [Mr. Underwood], and while I listened I thought, perhaps, he overlooked the chief significance of the pending resolution. I do not regard a pronouncement of formal peace as tremendously essential to the welfare of the United States or to the promotion of our trade relationships with the other nations of the world. I do not think a formal declaration of peace is essential to continued freedom from hostilities; I do not think it possible that Germany is likely to resume armed warfare against this Republic in two generations to come; nor does it seem to me necessary to have this formal declaration, particularly in this form, in order to resume our commercial relations with Germany, for they are already more or less resumed, and, in the very nature of things, trade relations with Germany will be developed according to the needs of that people and our own inclination to trade.

There has been but one way of recovery from war and war waste since the world began, and that is to work, to produce, and exchange; but we need not worry on this side of the Atlantic, for the war-torn nations of the Old World are just as certain to seek our favors in trade as that to-morrow shall come. So the peace resolution is not seriously involved in a continuation of peaceful relationships.

I think the significance of the passage of this resolution lies in its re-establishment of the constitutional powers of the American Congress. It not only re-establishes the powers of Congress, but it particularly emphasizes the powers of the Senate as a co-ordinate body in the making of treaties. I like to think that the so-called Knox resolution is going to do for America what the World War did for the autocrat of Germany. The World War demonstrated that no one man and no one power can rule the

world and the Knox resolution is going to be a formal demonstration that no one man can run the United States of America. I hope that it will not be considered out of place to say—

Mr. Nelson: Mr. President, may I ask the Senator a question?

Mr. Harding: Certainly.

Mr. Nelson: Can 12 men on this side of the Chamber run the United States of America?

SENATOR HARDING ON ONE MAN RULE.

Mr. Harding: I think they can do so better than one man. I do not think any one man is big enough to run the United States Government, much less to attempt to run the world; and I believe it is going to be a fortunate hour in American history when this Congress has demonstrated once more that this Republic is not subject to the dictation of one man.

I know of nothing in this Republic so valuable in the promise of influence for a popular representative government as the proof of the capacity of Congress to function. Mr. President, we surrendered that capacity very largely during the war. I voted for that surrender. We were willing to give unlimited authority to the Chief Executive in time of anxiety and stress; but while we gave during the war, we are going to be just as insistent in refusing to give in time of peace. I think America's greatest contribution to the world lies in the fact that it has furnished the best example of representative popular government the world has ever seen, and I rather rejoice in the manifestation we made of the willingness of Congress to submerge itself in the hour of extreme anxiety. I am only sorry that the Chief Executive of this Republic, because of Congress's willingness to surrender at that time, has gone on to assume continued powers for peace.

It is a very easy thing, Senators, to become intoxicated with power; aye, and it is a very easy thing to be carried away with a consuming ambition. I can sympathize, to a reasonable degree, with the ambition of the President to write for himself the most eminent page in the history of the world. It would have been a very remarkable thing to have committed 30 nations of present-day civilization to a supergovernment of the world, and I can see how the historian was led far afield by a very natural ambition.

But the President was warned when he went abroad. I found no fault with his going. He was not only warned before he went by a referendum to the American people on his own appeal in the elections of 1918, but he was specifically and formally warned by Members of this body after he went abroad, when notice was given that the Senate of the United States of America had no thought to surrender American independence of action. But in spite of these things—warnings from the people on the one hand and warnings from the Senate on the other—the President insisted: “My will or none.”

Senators on the other side of the Chamber know just as well as I do that the League of Nations would have been disposed of months ago, and this Republic would have been enjoying formal peace, if it had not been for the insistent obstinacy of the Chief Executive of this Republic. And so, Mr. President, I want to call attention to the fact, more for the Record than anything else, that in the passage of this joint resolution we are demonstrating to the people of the United States of America and giving notice to the world that the Chief Executive alone does not run the Republic of the United States of America; that this is still a representative, popular government under the Constitution; that the Senate has equal and co-ordinate power with the President in the making of treaties, and that neither to-day nor to-morrow shall there ever

be a Chief Executive of this Republic who, in the lure of ambition or the intoxication of power, can barter away anything essential to the welfare of this Republic.

This joint resolution will establish that fact, and that a Congress willing to submerge in war is once more functioning in peace. It will be the most wholesome message that can be sent to the world, and it will be the most reassuring message that can be given to the people of the United States of America.

Mr. Jones of New Mexico: Mr. President, will the Senator yield for a question?

Mr. Harding: I yield. I am quite through. I will yield the floor.

Mr. Jones of New Mexico: I merely desire to ask the Senator if he feels that the passage of this joint resolution is all that will be necessary to restore relations with Germany in the way that this country hopes it may be done?

Mr. Harding: So far as legislation is concerned, I do.

Mr. Jones of New Mexico: The Senator feels, then, that the passage of this joint resolution is all that needs to be done by the United States of America with reference to its relations with Germany?

Mr. Harding: So far as the United States Congress is concerned, yes.

Mr. Jones of New Mexico: I suppose, then, the Senator feels that at some time it will be necessary to have a treaty of peace with Germany, will it not?

Mr. Harding: I think it could be accomplished by the resumption of diplomatic relations, and that could be done—

Mr. Jones of New Mexico: Without any formal treaty of peace?

Mr. Harding: I think so.

Mr. Jones of New Mexico: Does not the Senator realize that thus far the Senate of the United States has failed to

unction by giving its support to any treaty of peace by a two-thirds majority of the Senate, the constitutional number?

Mr. Harding: Yes; I quite agree; and let me call the attention of the Senator from New Mexico to this point:

Throughout the period of the war this Republic was not in any way allied with those with whom we fought. We are known only as an associated power; and because of the obstinacy of the Chief Executive, whose dictum we refused to accept, we have stood aside and witnessed the Old World restore itself to peace, and we are left on the outside. Now, I agree in one respect with the Senator from New Mexico—I was one who believed in some new international relationship. I am sorry that we could not go into it on our own terms, as we ought, when the league covenant first came back. But we frittered away our day of opportunity to dictate the terms on which we might enter. It ought to have been done in the beginning.

Now we witness the world at peace, and here is the United States of America at formal war with Germany, and there is no necessity for it. There is no sense in it. It ought not to be for a single moment. We are literally at peace. Why not say so; and if the President of the United States in his obstinacy refuses to say so then let the Congress assert itself and say that war no longer abides?

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RETURN OF SEIZED PROPERTY TO CERTAIN CLASSES.

Amendments of June 5th, 1920.

Committee on Interstate and Foreign Commerce,
House of Representatives,
Tuesday, May 25, 1920.

The committee this day met, Hon. John J. Esch (chairman) presiding. Bill under consideration H. R. 14208.

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STATEMENT OF MR. LUCIEN H. BOGGS, SPECIAL ASSISTANT TO THE ATTORNEY GENERAL.

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We have had some rather distressing stories brought to us at the department of the hardships of some of the men who have been released. I remember one case where a man had been engaged in the jewelry business in Providence, R. I., and he had been interned because the information that had reached the Department of Justice at that time seemed to justify it, but there were no very serious charges against him, other than mere indiscretions in speech and things of that sort, and he had been released at a comparatively early date from the custody of the War Department. He was a trained expert in the jewelry business, but no other firm wanted to employ him, because they all assumed that just as soon as the war was over, if he was allowed to get his property back, he would go back into the jewelry manufacturing business again, and they did not want a rival in the business. The man had a family, and they were absolutely up against it; they did not have a thing on earth except charity to live on, although the holdings we had taken from him, I think in that case \$30,000 to \$40,000, would have been enough to keep them in comfort had we felt authorized to make the return.

NOTE.—The above evidently refers to Forstner Bros., of the Speidel case, which is discussed on another page.

In order to clear up one side so that it will be properly before the committee, I will say that in a few instances in the early stages of the game the department allowed some of these interned claims, but after a careful reconsideration of the entire legal situation the Attorney General reached the conclusion that the propriety of such returns was doubtful; he did not believe that he really had the power to make them, and therefore he rescinded his former ruling and thereafter adhered strictly to the policy that no claims of internes were allowed.

You gentlemen will realize that the provisions contained in this act were very novel, and no lawyer after a careful study is bound to reach a perfectly sound and safe conclusion as the result of his first acquaintance with this act. Therefore, I say, on a reconsideration of the matter the Attorney General reached the conclusion that it was very doubtful, if not unlawful, for him to return any of this property, and he thereupon ceased to do it, because he did not wish to trespass upon what seemed to be the function of Congress. Those cases of allowances were very few in number and for the most part consisted of very small holdings indeed. I think there was one allowance, if I remember correctly, of about \$30,000, all the others were under \$15,000, and the most of them were only matters of a few hundred dollars.

NO CONFISCATION BY GERMANY.

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Mr. Denison: Can you tell the committee what policy the Governments of Germany, Austria, and Hungary are following with our citizens in the same situation, if any?

Mr. Hill: The State Department received a telegram about three months ago, I think, from Germany, stating their purpose to release all property taken over, other than funds. In Austria they have not taken over property

to any extent. We seem to have no trouble with Hungary. Germany is disposed to return all property other than funds. I have not heard of any case where they are not.

Mr. Denison: That information has been given to the Government officially?

Mr. Hill: Yes, sir; we got that direct from the foreign office, through our mission in Berlin, that they were willing to return all the American property other than funds.

PROCEDURE TO RECOVER SEIZED PROPERTY.

Mr. Dewalt: Up to this time what, in brief, has been the legal procedure on the part of those people to have their property returned; what, in brief, has been the legal way?

Mr. Boggs: The first step in any instance is the filing by the claimant of a notice of a claim with the Alien Property Custodian. That notice is purely a notice, but it is the jurisdictional feature. Following that the claimant may adopt one of two remedies. He may pursue the non-litigated route, in which event he likewise files with the Alien Property Custodian an application to the President for the allowance of his claim and with that he submits such papers in regard to his proof as he sees fit to submit, showing that he is lawfully entitled to the return of his property. Then the Alien Property Custodian makes such investigation of the facts as he considers necessary to make and forwards all the papers to the Attorney General's office for consideration. That is customary, though not provided for by law.

Mr. Dewalt: Before you get to that subject, after the papers got into the Alien Property Custodian's office, then he passes upon them before he sends them?

Mr. Boggs: Not officially. He examines them with a view to determining the truth of the matters of fact, and if

he considers that it is advisable, from the standpoint of his office to make any further investigation of those facts outside, he makes that investigation.

Mr. Dewalt: Then he sends them to the Attorney General with a recommendation either for or against?

Mr. Boggs: Either for or against, or in some cases he sends them to the Attorney General without any recommendation.

Mr. Dewalt: They go to the Attorney General?

Mr. Boggs: Yes, sir.

Mr. Dewalt: What follows?

Mr. Boggs: Then those papers are considered by the special claims section of the Attorney General's office, and as at the present time constituted there is an examining committee of three members who must pass on every one of those claims before it is finally allowed or disallowed. Then, their findings pass on to the Assistant Attorney General who is in charge of that work, and any order made allowing a claim or disallowing a claim must be signed by the Assistant Attorney General, and then those orders, whether they be of allowance or disallowance, are returned to the Alien Property Custodian's office for execution. In some cases the orders are directed to the Treasurer of the United States, because in the event of the property being money that money is not held by the Alien Property Custodian but by the Treasurer, and so, in the event that the order is directed to the Treasurer of the United States the Alien Property Custodian, for convenience, is made the executing arm for the Attorney General's office in that behalf. It is simply a matter of convenience, because the Alien Property Custodian has all the trust accounts on his ledger and he knows whether the property is only money or whether it consists of other things as well. If there is money involved he transmits that order

to the Treasurer of the United States and procures the issuance of the check. If it is other property he arranges through his depositories for the return of that property to the claimant against a proper receipt.

Mr. Dewalt: As I understand, and if I am wrong you will correct me, up to this time the adjudication of these claims rests with the Attorney General?

Mr. Boggs: That is merely one of the methods, sir. The other method is the litigated method in the courts.

Mr. Dewalt: Please proceed with that.

Mr. Boggs: Yes, sir.

Mr. Dewalt: Before we get to that, you say that that has been abandoned, has it?

Mr. Boggs: No, sir. I say that is the method in vogue at the present time.

Mr. Dewalt: In the Attorney General's office now?

Mr. Boggs: Yes, sir.

Mr. Dewalt: I thought you just said a moment ago that he had rescinded that?

Mr. Boggs: No, sir. I referred only to the ruling on the legal status of internes. I said there had been a few cases at a much earlier date and the Attorney General's office had allowed these claims, but that on reconsideration he had decided that it was not proper to do so and from the date of the reconsideration no further allowances had been made.

Mr. Dewalt: What you have said applies not only to these, but to others?

Mr. Boggs: To all claimants.

Mr. Dewalt: That is one method?

Mr. Boggs: Yes, sir.

Mr. Dewalt: The other is the litigated method?

Mr. Boggs: Yes, sir. That is accomplished in the first instance by the filing of a notice of claim, just as in the other case, and following that the claimant files a bill in

equity in the district court of the United States in which he resides, or at his election, in the Supreme Court of the District of Columbia, and that bill in equity proceeds just along the line of other bills in equity and the same procedure is had thereon. The law provides that the Treasurer of the United States and the Alien Property Custodian, as the case may be, are made parties to the bill, and they then file such answers, with the advice of the Attorney General of the United States, as they think proper to file, and the issues are made and the case is tried just as any other case is tried, and the decree has the same effect with regard to the funds or property in the hands of these respective officers that it would in case of any defendant in a chancery suit.

EXTENT OF ATTORNEY GENERAL'S POWER TO RELEASE SEIZED PROPERTY.

Mr. Dewalt: Under what provision of the trading with the enemy act do you conceive it to be in the power of the Attorney General to adjudicate these claims?

Mr. Boggs: It is by virtue of section 9, which gives to the President of the United States the power to consider these claims. Section 5 of the same trading with the enemy act gives to the President the power to delegate to other officers such of the powers therein as he may be advised, and he has exercised that right by delegating that power of passing on the nonlitigated claims to the Attorney General.

Mr. Dewalt: Under the present system the Attorney General and these three attorneys whom he has selected as a claims board would be able to settle the right of property as between the claimants and the United States Government and the Alien Property Custodian?

Mr. Boggs: Yes, sir.

Mr. Dewalt: Unless the party pursue the method of litigation?

Mr. Boggs: Yes, sir. It would be proper to state here that there is no *res adjudicata* created by an adverse decision of the Attorney General in the matter, because the statute expressly provides that if the President declines to allow the claim or fails to act on the same within 60 days after it has been filed, then the claimant has the right to proceed with a bill in equity just as though he had never applied for an Executive allowance.

Mr. Dewalt: That applies in both instances, either where there is a failure to act in 60 days or an adverse decision by the Attorney General?

Mr. Boggs: Yes, sir.

Mr. Denison: What effect upon that procedure would the passage of this act have, as outlined?

Mr. Boggs: It will have very little effect on the procedural side. The claims which I have been discussing so far have been those which are allowable under Section 9 as originally enacted. In addition to them, there is a special class of claims that are known in the office of the Alien Property Custodian, for convenience, as the French and Belgian claims. In July, 1919, there was passed an amendment to Section 9 which provided that if the President should find that in any given case the property of a supposed enemy was taken because of the fact that he was resident in the territory occupied by the armies of the enemy—I am using my own language, not quoting the act—in such cases if the President satisfies himself as to the truth of the facts he might on his own motion provide for the return of the property. That was done for convenience, because we had several hundred cases where French and Belgian property was taken solely for the reason that the owners were in territory occupied by the German Army.

I think I am correct in saying that this arrangement was made with the full knowledge and assent of the diplomatic corps of the two countries principally involved, France and Belgium, and a number of these voluntary returns have been made in that manner.

Mr. Dewalt: What do you mean by voluntary return?

Mr. Boggs: By the executive department of its own motion. There, again, it takes an order from the President to do it. That power he has delegated to the Attorney General so the Attorney General makes the orders for the return of these properties; in that case there is a very much simpler procedure. The Alien Property Custodian's office simply certifies to the Attorney General's office that in the following cases we hold the following property which was taken simply by reason of the fact that the owners reside in territory occupied by the Army of the enemy and thereupon the Attorney General's office grants the order providing for the return of the property. The amendment which is here proposed is primarily an extension of the second method of executive relief, namely, by voluntary return.

Subsection *b* of the proposed act concerns itself entirely with that method of return, but it was not considered desirable or proper to restrict the parties solely to that method of getting their property back and therefore Subsection *c* permits any person who would be entitled to receive his property back under the provisions of Subsection *b* to apply for it in the usual way as originally contemplated in Section 9. In other words, the department may not have had information, as a matter of fact, that he falls absolutely within the category outlined in this amendment, and if the department is not sufficiently speedy in returning the property to him, then he may file his notice of claim and proceed to recover either by the

nonlitigated method or by suit as originally provided in the trading with the enemy act.

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PROPOSED CHANGES IN THE LAW.

The Chairman: You change the existing Section 9 by covering property which may have been seized by the Alien Property Custodian?

Mr. Boggs: Yes, sir.

The Chairman: Please give to the committee the reason for that change?

Mr. Boggs: The trading with the enemy act as originally enacted did not provide for the acquiring of property by the Alien Property Custodian, except in two methods. The first method was by a requirement issued by the President—which he delegated, of course, to the Alien Property Custodian—a requirement by which the President directed the person who had custody of enemy property to turn it over to the Alien Property Custodian. The other method provided for in the act as originally enacted was by voluntary conveyance. It was provided that in case any person had property that was enemy property in his possession he might voluntarily convey it or turn it over to the Alien Property Custodian and be relieved from any further responsibility in connection with it. But, on November 4, 1918, there was enacted an amendment to the trading with the enemy act which also gave the Custodian the power to seize property. That amendment was primarily designed to cover intangibles of various sorts, such as stocks, patents, and other things of that kind. Therefore, in order to make it harmonious and to show that we did not distinguish between property which came to the Custodian's hands in one way from that which came in another way, the word "seized" was added to the old portion of the act, giving the right of

claim to a person who was not an enemy or alleged enemy. That part is merely declaratory of the interpretation that the Attorney General's office had already put upon the act. We have never attempted to make that distinction in our return of property. We took it for granted that it was the intention of the act to allow return in proper cases, whether the property had come into the Custodian's hands by virtue of conveyance or seizure, but in order to set at rest any future doubt on that subject we merely inserted the words "or seized by him" in this draft.

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STATE DEPARTMENT OFFICIALLY INFORMED THAT GERMANY STANDS READY TO RETURN AMERICAN PROPERTY.

STATEMENT OF MR. RALPH W. S. HILL, ASSISTANT SOLICITOR,
DEPARTMENT OF STATE.

Mr. Hill: What is your question, Mr. Cooper?

Mr. Cooper: There is a man who is a citizen of this country, but who at the time war was declared was engaged in a manufacturing enterprise in Germany, and at the time we declared war upon Germany he had to hurriedly leave the country. He got out of Germany and got back to the States, but Germany confiscated all his money he had in the banks and also took his property. He is wondering whether the United States will protect him and give him some relief for that loss.

Mr. Hill: He is an American citizen?

Mr. Cooper: Yes.

Mr. Hill: I stated to the committee before you came in that the State Department had made an inquiry as to the present treatment of our property in Germany, and about three months ago got a report through the American

commissioner in Berlin, who is unofficially in Germany, from the German custodian of enemy property that the German Government was prepared at this time to release all property taken over other than cash holdings, so it is possible he could get back the property other than such funds.

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POWER OF ALIEN PROPERTY CUSTODIAN TO RESTORE.

The Chairman: Even in the case of taking property under misapprehension, does the Alien Property Custodian construe the act in such a way as to deny him the power of restoration?

Mr. Hill: I understand that the Attorney General has held that he can not, under the act in its present form, release property which for any technical reason was enemy or ally of enemy property at the time of taking over.

The Chairman: How would that apply in the case of seizure of property belonging to residents of countries against which we have made no declaration of war? I have reference to Turkey and Bulgaria.

Mr. Hill: They are, under the trading with the enemy act, allies of the enemy, and the act gives authority to take over such property.

The Chairman: And we have taken over such property?

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Mr. Dewalt: I understand that. These stocks and bonds, which originally were taken over by the Alien Property Custodian, I should presume would still be in the hands of the Alien Property Custodian; are they?

Mr. Ahern: They are, or his depositaries.

Mr. Dewalt: Authorized under the act?

Mr. Ahern: Yes.

Mr. Dewalt: As to dividends upon these stocks and interest upon these bonds, where did that go?

Mr. Ahern: They come to the Alien Property Custodian quarterly; they are collected by the various depositaries and are remitted quarterly and then they go into the Treasury.

Mr. Dewalt: In this process of conversion, let us illustrate. A corporation is existant, having its location and its manufacturing enterprise in the City of New York. Upon investigation it was determined, and we will say properly determined, that it was owned and controlled by its majority stock, by alien enemies or by persons who reside in alien territory, which, under the terms of the act, were construed to be alien enemies. Now, after that determination, the Alien Property Custodian took over that property. If he could not get the stock, as held by the stockholders, he was authorized under the act, as I remember it, to have certificates of stock issued to him in place of those he could not actually obtain possession of.

He then obtained the controlling interest in the enterprise by having the majority of the stock. He then proceeded to elect his own board of directors because he had control of the stock and if he saw fit, as in many instances he did—and perhaps very wisely; I do not question that—he sold, lock, barrel, and stock, the whole enterprise.

Mr. Ahern: Pardon me, it was usually the stock he sold.

Mr. Dewalt: I meant the whole concern when I said lock, barrel, and stock. He sold the whole enterprise. When he did not sell out he retained these stocks, as I understand it, and then represents a portion of this item.

Mr. Ahern: Yes.

Mr. Dewalt: Who is running the enterprises now in such instances, the Government?

Mr. Ahern: No; in cases where we had a large interest—a majority interest—we put in directors and they are running it now. In cases where the interests were small, the original directors are running it.

Mr. Dewalt: You elected a board of directors and they are running it for a new corporation formed by themselves?

Mr. Ahern: No.

Mr. Dewalt: Or are they running it for the Government?

Mr. Ahern: They are running it as stockholders of the old corporation. The Government, of course, receives dividends on such part of the stock as it holds.

Mr. Dewalt: Here is the Bosch Magneto concern, taking a concrete instance, which is a pretty large enterprise. That was sold?

Mr. Ahern: Yes, sir.

Mr. Dewalt: Before it was sold directors were appointed, managers were appointed, and they ran the concern for somebody. What became of that original stock? Was that all wiped out?

Mr. Ahern: The old stock, before we took it?

Mr. Dewalt: Yes.

Mr. Ahern: Yes; that is wiped out by the trading-with-the-enemy act, when the Alien Property Custodian makes the demand.

Mr. Dewalt: Then the new enterprise, when they became purchasers at public sale, formed a new corporation and went on with the business, but the Government derives nothing from them at all; that sale was complete?

Mr. Ahern: Yes, sir.

Mr. Dewalt: What became of that money obtained by the purchase; was that turned into the Treasury?

Mr. Ahern: That is in the Treasury.

Mr. Dewalt: Invested in Government bonds?

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INTERNES AND THEIR PROPERTY.

STATEMENT OF MR. JOHN HANNA, SPECIAL ASSISTANT TO THE ATTORNEY GENERAL, DEPARTMENT OF JUSTICE.

Mr. Hanna: Mr. Chairman, the alien enemies delivered to the War Department for internment during the war comprised substantially two classes, the more numerous class being the officers and seamen of the German merchant marine, approximately 2,500, and of those approximately 1,950 have returned to Germany. Of the internes arrested under individual presidential warrants and delivered to the War Department for internment, there were in all approximately 2,300. Of those approximately 850 have returned to Germany. Of the remainder, approximately 1,450, about 80 are included in the list of those who would be affected by the passage of the legislation which is proposed. Of the internes whose property was taken by the Alien Property Custodian and are listed in the memorandum furnished by Mr. Boggs, there are approximately 100, and of those about 20 have been returned to Germany. So that the legislation only affects about 80 internes.

The department is gratified to know, too, that substantially all of the more troublesome internes have returned to Germany.

The Chairman: These 80 are expected to become American citizens?

Mr. Hanna: I cannot answer that question. I know a considerable number of the younger men do expect to

become American citizens. I take it some of the older men do not, but of those older men many of them had a long residence in the United States and were not even indirectly connected with the criminal activities of the German Government agents before we were in the war, although they were prominently connected with German business interests in some cases. The department, as a matter of protecting the United States from a potential danger, felt justified in putting them in internment camps at the commencement of hostilities. Many of them have now been released from the internment camps for long periods.

DEBATE IN SENATE.

Amendment of Trading With the Enemy Act.
(*Congressional Record*, June 4th, 1920.)

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Mr. Nelson: I ask unanimous consent that the business of the Senate may be temporarily laid aside while I make a report from the Judiciary Committee and ask for its present consideration; and in connection with it I will make a brief statement, not occupying over five minutes.

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Mr. Nelson: Mr. President, this bill is unanimously reported by the Judiciary Committee, and I desire to make a brief statement in relation to it.

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Mr. Curtis: I should like to ask the Senator if the bill includes the class of American citizens who, unfortunately, were in the enemy's country at the time the war broke out, and whose property was taken, and they have been unable to return to the United States because of the state of war and the restrictions that were imposed, and their property is still held by the Alien Property Custodian?

Mr. Nelson: Yes; it includes them. I was about to remark that it also includes another class. Senators will remember that during the war quite a number of people were interned because of their officious activity in behalf of the Germans. Most of them, I think nearly all of them, have been discharged, and a large share of them have returned to their own country. This bill contains a provision that those interned men who have been discharged and who are living here at the time they make application for the return of their property and at the time the application is granted, shall be in the same status as the other classes.

Those are the substantial provisions of the bill.

Mr. Underwood: Mr. President—

Mr. Nelson: I yield to the Senator from Alabama.

Mr. Underwood: I have no doubt the Senator has made the statement clearly, but I did not entirely grasp it, in reference to the German alien who was living in this country at the time of the declaration of war, and remained in this country during the war, but was interned by the order of the President, and his property was taken. This bill authorized that man's property to be returned to him; does it?

Mr. Nelson: If he is living in this country, it does; but not if he leaves this country. It applies only to those who continue to live here, and are living here at the time of the application.

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Mr. Hitchcock: Mr. President, I should like to ask the Senator a question.

Mr. Nelson: I yield to the Senator from Nebraska.

Mr. Hitchcock: I should like to understand whether this bill provides that any citizen of Alsace-Lorraine or any citizen of any subject people of Germany or Austria-

Hungary which under the terms of the treaty has been taken away from Germany or Austria-Hungary is by that act and under the terms of this bill removed from the class of an alien enemy?

Mr. Nelson: Certainly. That is one of the main purposes of the bill—to allow the Alsatians and the Lorrainers and the citizens of the New Poland and Czechoslovakia to come in and have their property returned.

Mr. Hitchcock: It takes them out of the class of alien enemies, and authorized the restoration of their property?

Mr. Nelson: Yes. That is the main purpose of the bill.

The Vice President: Is there any objection to the present consideration of this Bill.

There being no objection, the Senate, as in Committee of the Whole, proceeded to consider the bill (H. R. 14208) to amend Section 9 of an act entitled "An act to define, regulate, and punish trading with the enemy, and for other purposes," approved October 6, 1917, as amended.

Mr. McCumber: Mr. President, I think the title of the bill ought to be changed so that it would read:

A bill for the relief of wealthy American women who have purchased title of nobility prior to the war.

The Senator says that this is only one of the incidentals of the bill; that the main purpose of the bill is to assist Alsatians and people of these new countries that have been created and allow them to come in now and claim their property. So far as that is concerned I am in hearty accord with it, but I am not in accord with the idea of relieving any American woman who was willing to sell her American citizenship for a German title. I do not care whether it was before the war or after the war. She marries a title. She has the wealth. The German nobleman wants the money. The American

woman who has the money wants the title, and she is willing for that title to become a German citizen. She does so. The war breaks out and her property in the country where the wealth was made, in the good old United States, is taken possession of because she is an alien. She says, "Inasmuch as I was born in this country even though I sold every right that I had as an American citizen for a Dutch title, I now want to get back my money in the United States." I, for one, would give her less consideration than I would give to the good German frau who happened to have property in the United States.

Mr. King: Mr. President, will the Senator yield?

Mr. McCumber: I yield.

Mr. King: I would like to ask the Senator, and if he can not answer, the chairman of the committee, whether or not the bill, properly interpreted, would give to an American woman who married a German and who has taken up her residence and maintained it in Germany, the restoration of her property? My understanding of the bill was that she had to remain in the United States in order to have the property returned, but if she went across the sea and took up her permanent abode in Germany she would come in the same category as other German nationals and would not be permitted to have the property restored.

Mr. McCumber: I do not understand that she would regain American citizenship even.

Mr. King: Then, if the Senator is right, I share the views of the Senator, and we ought to amend it in that respect.

Mr. Knox: Mr. President, entertaining as I do the highest respect for the Senator from North Dakota (Mr. McCumber) and for his judgment, and his wisdom, and his consideration in matters of great importance, I must

confess that I am perfectly astounded at the remarks that he has just made. Why should a woman be penalized, even though she is an American, if her affections have been attracted by a foreigner? Why should a woman whose fortune has been made by her ancestors in this country have taken away from her under what the Supreme Court of United States, speaking through the great Chief Justice Marshall, pronounced to be an act of land piracy if you took from her fortune because, by the mere act of marriage, she is technically an alien enemy?

Mr. President: I think one of the most shameless things the American Government has ever performed was the renunciation of what we have always contended to be the moral and the decent international thing, that is, to preserve the right of aliens from conscription in the case of war, and when we passed the alien-property custodian act we did that. In my judgment it is only because Germany has acquiesced, under the terms of the Versaille treaty, that property should remain in the custody of the United States for the discharge of the obligation which Germany owes to the United States, that it is defensible at all.

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Mr. McCumber: Mr. President, I am not at all amazed at the deep interest the Senator from Pennsylvania is taking in this measure, when I find that his mind centers around some case which has happened in Pennsylvania, where somebody married a poor German professor, and whose money and the money of her father and her grandfather, and so forth, is held by the Alien Property Custodian. I will join the Senator from Pennsylvania in the return of the property taken from all the German alien enemies when the proper time comes and we have peace with that country. But I am opposed in making a distinc-

tion between those who were alien enemies because they had always lived in the Fatherland and those who became alien enemies because, as I said, in those cases they have married German titles and are now penalized because they have done so.

I think the most of the cases which are covered and to which relief will be granted by this bill will be the character of cases I have mentioned.

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Mr. King: Mr. President, in view of the observation which I submitted a moment ago, I wish to make a few remarks concerning this measure.

I did not approve the principle of the bill which authorized the seizure of the property of German nationals within the United States. There could be no objection, perhaps, to the mere taking of the property; but we actually confiscated it. The United States entered into a treaty with the Kingdom of Prussia more than a hundred years ago, and under its term each nation was to respect, not only in peace but in war, the property of nationals residing therein, and ample opportunity was to be afforded the nationals of each belligerent to remove their property from the alien territory.

It looked to me, Mr. President, that in the passage of the Alien Property Custodian act, notwithstanding Germany was our bitter enemy and a foe to civilization, we were somewhat lowering the high standard of international morality which had always been maintained by this Republic and which should always characterize a great Christian Nation such as the United States. I fear that we set a precedent which in the years to come may seriously affect the American people. We are a creditor Nation, and will have investments in all lands. We would

suffer materially if this precedent were followed by other nations with which we might be at war.

But, Mr. President, having passed that act under which the property of German and Austrian nations in the United States was seized, I see no reason why there should be discrimination—and I address myself now to the Senator from Pennsylvania (Mr. Knox), so that he may not misunderstand my position—between nationals born in Germany and those of American birth who have expatriated themselves. I see no reason why the property of Germans who were born in Germany and which we have seized should not be restored to them if we restore to women who were born in the United States and who married Germans and who have expatriated themselves and taken up their residence in Germany their property which was seized in the United States. That is my position. I do not think we ought to restore to a woman who married a German and went to Germany to reside, and is still residing there, the property which was seized here until we restore to other Germans the property of which we deprived them.

A law was enacted during the war which, as I recall, provided that American women who had married Germans but who resided in the United States and called this their home, and this was in fact their home, should be exempted from the operations of the Alien Property Custodian act. I was in favor of that; but I agree with the Senator from North Dakota (Mr. McCumber) that if an American woman married a German and went to Germany prior to the war and made it her home, and she was there during the war, so long as we retain the property of German nationals seized in the United States we should hold such property until we return the property of German nationals, if we shall take that course, and then we should

restore it to her. We ought not to discriminate. That is my position.

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DEBATE ON TREATY OF VERSAILLES.

DEBATE IN SENATE.

(Congressional Record, Sept. 4th, 1919.)

Speaking on the floor of the Senate on September 3rd, 1919, Senator Hitchcock said:

"As long as we remain a party to the treaty we get the benefit of that acknowledgment which Germany was forced to make under compulsion. Some people say we can negotiate a separate treaty of peace with Germany. Those who talk that way evidently have no conception of the enormous benefits and advantages which the United States derives from the treaty which we wrung from Germany at the cannon's mouth.

"Germany might as very well say to the United States that she did not desire war with the United States, that she had never declared war on the United States.

"And that it was the United States which forced war upon her, and she might very well claim that the United States and not Germany should be responsible for the damages of the war; by signing this treaty we get the benefit of her acknowledgments that she was forced to make under compulsion."

NOTE—The newspapers carrying the above article stated that Senator Hitchcock, "His address carefully prepared after a series of conferences with the President, was regarded as reflecting the Administration viewpoint."

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TREATY OF VERSAILLES DISCUSSION IN THE UNITED STATES
SENATE.

(Congressional Record, Aug. 29-30, 1919.)

United States Senator Hitchcock (the Democratic leader in the Senate) admits that the treaty provisions concerning the seizure of enemy property by Palmer violated the existing treaty relations between Germany and the United States and was contrary to international law and that the only way to correct the unlawful acts thus performed was to pass the Treaty of Versailles, which contained provisions validating all Palmer's illegal acts.

Concerning the above the newspapers of August 30, 1919, carried large head lines concerning the Hitchcock speech—such as "Hitchcock says seizure of German-owned property was a High-Handed Proceeding," and the New York American of August 30, in its Washington dispatch dated August 29th, says, "Administration officials had no defense to-day to the charge that German-owned property in the United States was seized by the Alien Property Custodian's office in violation of international law and of our treaty with Germany," and quotes the words of Senator Hitchcock as delivered on the floor of the Senate the day before, as follows:

"The seizure of German owned property in the United States was a high-handed proceeding. We did it on the theory that we were going to win the war. It was a violation of international law and of our treaty with Germany and we had no right to do it.

"But this treaty corrects that by validating all the acts of the Alien Property Custodian."

Before the above statement on the floor of the Senate by the Democratic leader as above recorded was made he had indulged in similar remarks on the floor of the Senate in various debates on the Peace Treaty—for instance, on August 13th, 1919, he said, "This treaty as-

sures us the validation of all our highhanded acts in dealing with property and persons of German nationals in this country.”

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DEBATE ON VERSAILLES TREATY IN THE SENATE—FUTURE OF UNITED STATES NOT FOR SALE.

See Congressional Record August 14th, 1919.

In one of the debates on the floor of the Senate Senator Underwood made the point that if the treaty was not ratified the United States would lose \$800,000,000 (eight hundred million dollars) of seized German property held by the Alien Property Custodian. Mr. Lodge remarked, “The future of the United States is not for sale at that price.”

TREATY OF VERSAILLES.

DEBATE IN THE SENATE, SEPTEMBER 19, 1919.

(*Congressional Record, Page 5973.*)

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Mr. Hitchcock: Unless the Senate ratifies this treaty, the United States will lose the agreement of Germany for validation of the acts of the Alien Property Custodian, and that if that is lost those acts become a natural claim of Germany to be settled by the United States, because there is no warrant for believing that the United States, either through its act of Congress or the act of its Alien Property Custodian, had any right to handle the property of German nationals as we did handle that property, and we can only vindicate ourselves by securing from Germany, as we have done in this treaty, the agreement for the validation of those acts.

Mr. Underwood: I will say to the Senator from Ne-

braska that it even goes further than that. There was supposed to be a treaty with the Prussian Government that was afterwards claimed to be ratified and made part of the treaties with this country and the German Imperial Government, by which it was provided that certain care should be taken of the property of two countries if they went to war, German property in this country and American property in Germany, and that certain disposition should be made of it. It is on that basis that the German Government is now claiming, and did claim until they signed the treaty on the dotted line in Paris, that they had the right to take back the property held by the Alien Property Custodian. That is their claim. But, of course, they waived that under the treaty of peace.

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(Congressional Record, Sept. 19, 1919, Page 5975.)

Mr. Borah: This treaty can only protect the situation and can only protect the Alien Property Custodian or protect the fund by validating something which has been invalid.

Mr. Hitchcock: Mr. President, I think the Senator from Idaho, if he investigates the question, will come to the directly opposite conclusion, and that he will conclude that the representatives of the United States were very wise when they incorporated in the treaty an agreement by Germany under which she validates the act of Congress and the action of the Alien Property Custodian. In the absence of fraud, those acts are absolutely valid. That stipulation was made for this reason: Germany had asserted before the peace commission a claim that the treaty of 1828 with Prussia was in force. That treaty revived certain provisions of the treaty of 1798; and those two treaties together were intended to operate in case of war between the United

States and Germany. They provided that any national of Germany in the United States or any citizen of Germany having property in the United States should have that property protected in the event of war and should be permitted nine months, if he were a resident of the United States, in which to sell his property and leave the country, and that the property of her nationals was to be sacred from seizure.

Mr. Borah: But, Mr. President, the act of Congress would repeal the treaty.

Mr. Hitchcock: The treaty was intended to exist during war.

Mr. Borah: Precisely; but—

Mr. Hitchcock: And Congress could not violate that treaty—

Mr. Borah: Oh, yes, it could; that is, could abrogate it.

Mr. Hitchcock: Without laying itself open to a claim by Germany which Germany could assert any time in the future. That claim is barred only by the provisions of the treaty.

Now, Mr. President, that was considered highly important at the time because it not only involved \$750,000,000 which we have realized or are to realize from the sale of this property, but it made it possible to guarantee the payment out of this fund of certain claims which America must protect. There are claims amounting to \$45,000,000 for damages which American citizens suffered while the United States was neutral; they are to be protected out of this fund. There is something in the neighborhood of \$250,000,000 worth of American property in Germany which can not be safeguarded unless this fund is used for that purpose. There is also the indebtedness of German citizens to American citizens of an unknown amount, but which undoubtedly runs into a large figure. All of those claims are to be paid out of the proceeds of the liquidation of the property of German nationals in this country; and Germany assumes

under the treaty to reimburse her nationals and guarantee that they shall have no claim against the United States for anything except in the case of fraud in the administration of the act. The Senator certainly does not think that the United States commissioners made a mistake in putting those clauses into the German treaty which thus validate the act of Congress, wipe out the old treaties of 1828 and 1798, and validate all of the acts of the Alien Property Custodian.

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Mr. Hitchcock: The Senator will realize that those treaties were treaties intended to operate in case of war. They were not treaties that were killed by a declaration of war; they were reciprocal treaties, and they specifically provided that for nine months after the United States went to war with Germany they should be in effect and German nationals should be permitted to save their property. We disregarded that. Why? Because we believed we were going to beat Germany and because we were going to get in the treaty of peace a validation of our act.

Mr. Borah: We had a perfect right to disregard the provisions of the treaty; and Germany could derive no benefit whatever by reason of the fact that Congress saw fit to do so.

Mr. Hitchcock: Does the Senator question the fact that if it were not for those provisions of the treaty of peace Germany would have an enormous claim to be asserted against the United States?

Mr. Borah: I do question it.

Mr. Hitchcock: Which would probably lead to animosity and possibly ultimately lead to war.

Mr. Borah: Animosity does not cut any figure; we can not control that; but I challenge the proposition that Germany would have any claim whatever if the alien property custodian law was executed according to its terms. We

had a perfect right to pass it; we had a perfect right to execute it, and if the Alien Property Custodian performed his duties under the law and in accordance with the law there was no necessity for a validation of his acts.

Mr. Hitchcock: The Senator will understand that I am not here to argue that Germany is correct in her position.

Mr. Borah: Oh, yes; I see.

Mr. Hitchcock: I am not here to argue that Germany was correct when she said the treaty of 1828 is still in force and that that perpetuates the treaty of 1798; but I say that the question is largely a legal question; it is a question of international law. When two countries make a treaty and agree that if they should go to war their nationals will be protected it is a question that may be asserted any time in the future unless it is wiped out by a treaty agreement, and it can not be wiped out in this instance unless the treaty is ratified.

Mr. Walsh of Montana: Mr. President—

Mr. Borah: I yield to the Senator from Montana.

Mr. Walsh of Montana: There can be no doubt at all about the position taken by the Senator from Idaho that the Alien Property Custodian act and the Trading-With-the-Enemy Act are valid acts of Congress, the treaty of 1828 to the contrary notwithstanding; that is to say, that the courts of the United States will recognize the acts of Congress as, one might say, abrogating the treaty; but of course the Senator would not contend that in an international forum of any kind the United States would be considered as escaping from its obligations under the treaty of 1828 because it passed such an act as the Trading-With-the-Enemy Act. The power of Congress to abrogate a treaty by act of Congress is simply local in its operation; it does not affect the validity of the treaty when it is brought under consideration in an international forum; otherwise a treaty would have no significance at all, because either party could

repeal it at will without any responsibility whatever and without being answerable.

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DISCUSSION ON THE FLOOR OF THE SENATE ON THE TRADING
WITH THE ENEMY ACT, AMENDMENT OF JUNE 5, 1920.

(*Congressional Record*, June 3, 4, 5, 1920.)

Senator King: "It looks to me, Mr. President, that in the passage of the Alien Property Custodian's Act we were somewhat lowering the high standard of international morality which had always been maintained by this Republic and which should always characterize a great Christian nation such as the United States. I fear that we set a precedent which in the years to come may seriously affect the American people."

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Senator McCumber said: "I for one would give her less consideration (referring to the American women who married a foreign title) than I would give to the good German frau who happened to have property in the United States."

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Senator Knox, quoting Chief Justice Marshall, said that "The taking of private property under the circumstances was 'an act of land piracy.'"

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CALDER RESOLUTION TO INVESTIGATE OFFICE
OF ALIEN PROPERTY CUSTODIAN (*Senate Resolu-*

tion No. 172).

The above resolution aimed to investigate the entire administration of both Mr. Palmer and Mr. Garvan, in the above office and was under discussion on several occasions on the floor of the Senate, especially on the morning of September 19th, 1919, which will be found on page 5970, *Congressional Record*, the current number of that date.

Senator Underwood, it there appears succeeded in diverting the entire consideration of the matter to a parliamentary discussion, as to whether it should not first be referred to the Judiciary Committee, so as to first determine, if an investigation was desirable.

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BLOT ON FAIR NAME OF NATION.

Mr. Calder: Mr. President, this resolution refers to a great bureau of the Government, a bureau that has taken over nearly a billion dollars' worth of property. Over 40,000 concerns are involved. There is no law permitting anyone to check up what this bureau has done. I have not attacked the Alien Property Custodian's office, nor did I seek to prevent the confirmation of Mr. Palmer as Attorney General; but if one-fourth of the charges made to me personally about the conduct of the business of that office are true, then it is a blot upon the fair frame of this Nation. What I want to find out is whether these charges are true.

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Senator Sterling's remarks are pre-eminently, important, as he was the only one of the Senators taking part in the discussion, who was a number of the original Subcommittee of the Judiciary Committee, who sat to determine whether there were any charges against Mr. Palmer.

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Mr. Calder: Mr. President, many of the charges that have been brought to my attention were not referred to that committee.

Mr. Underwood: Why were they not laid before the committee?

Mr. Calder: They were of such a character that they could not be, effectively, without subpœnaing witnesses and cross-examining them.

Mr. Underwood: Then does not that lead the Senator to the proposition that it is very much better to refer this to the Judiciary Committee, which already has information on the subject, let the Senator go before that committee and present these charges, and let them determine whether there is sufficient in the charges to warrant the expenditure of two or three hundred thousand dollars in an investigation before we go into all these expenses of investigation?

Mr. Calder: Mr. President, the expenditure of \$100,000—

The President pro tempore: Does the Senator from Idaho still further yield?

Mr. Borah: I yield.

Mr. Calder: The expenditure of \$100,000 or \$200,000, or even more than that, would be a splendid investment for the Government if we could obtain information that would either demonstrate the truth of these repeated assertions or show their falsehood.

Mr. Sterling: Mr. President—

The President pro tempore: Does the Senator from Idaho yield to the Senator from South Dakota?

Mr. Borah: I yield.

Mr. Sterling: I am not quite in sympathy, I will say to the Senator from Idaho, with the idea of referring this matter to the Judiciary Committee. The Chairman of the Judiciary Committee is not here, and I do not profess to speak at all for the chairman or for the Judiciary Committee, but one phase of the matter has been before a subcommittee of the Judiciary Committee of which I was a member. We did not think that it was within the scope of the authority of the subcommittee to go into any thorough investigation of the acts of the Alien Property Custodian. We examined some evidence in regard to

special cases that were submitted, and reported favorably on the nomination of Mr. Palmer as Attorney General under the evidence that we had. We did not feel that we could go into the whole subject of the Property Custodian's acts, and hence did not. We did not feel that we had the authority to do so. Witnesses were not subpoenaed, although witnesses appeared voluntarily before the committee. If there is to be an investigation, I think it would be better, as the matter now stands, to refer it to a select committee as provided by the resolution.

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Mr. Robinson: Does the Senator from South Dakota object to a committee of the Senate first investigating the advisability of adopting the resolution; and if so, why does he object? Does the Senator object to the Judiciary Committee passing upon the question as to whether this investigation should be made?

Mr. Sterling: I can not help thinking, Mr. President, that a reference of the resolution now to a committee for the purpose of determining whether there should be an investigation or not is unnecessary. I put it primarily on the ground that the Senate can determine, without reference to a committee, whether such an investigation should be had.

Now, coming to the question suggested by the Senator from Arkansas, in voting for this resolution I cast no reflection whatever upon the Attorney General, either as Attorney General or as Alien Property Custodian; but here is property worth nearly a billion of dollars; here are 40,000 distinct properties involved, and the Attorney General himself has courted an investigation. He stated before, the subcommittee that he would welcome an investigation.

I think for less causes and where a less amount was in-

volved investigations have been had, and that, too, without reflecting upon the officer administering the place or performing the duty. With all this vast amount of property involved, worth nearly a billion dollars, is it not proper that the Senate of the United States should make inquiry, in order that not only the Senate but the people may be satisfied that there has been a proper conduct, a proper administration of this great office under these circumstances?

The Alien Property Custodian had tremendous power under the trading-with-the-enemy act. Is there to be objection to an inquiry now to be made as to whether this office has been conducted properly or not, wisely or not, and that, too, without any reflection upon the character, the ability, or the integrity of the Attorney General, lately confirmed to that high office?

Mr. Borah: May I ask the Senator from South Dakota a question before he takes his seat?

Mr. Sterling: Certainly.

Mr. Borah: The feature of this investigation in which I am most interested are the results which are to follow. In case it is found that the administration has been an unwise administration is there anything to be had out of the situation other than a condemnation or reflection upon the administration? Can any property rights be recovered? Can any interest be recovered that may have been forfeited or surrendered or unwisely disposed of?

Mr. Lodge: Mr. President, this involves a section of the treaty which I think the Senator will recall, that from this fund are to be taken payments of all prewar claims. This fund is responsible for all those claims, whatever they may be, much or little. Therefore, there is a direct interest of people who have lost vessels or people who

went down on the *Lusitania*, and of the prewar claims in the disposal of this great fund of \$1,000,000,000.

Mr. Borah: Precisely.

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Mr. Borah: I understand the Senator was on this subcommittee?

Mr. Sterling: Yes, sir.

From here on the debate dribbled on until the morning hour was exhausted and the regular business of the Senate automatically shut out a vote on the resolution.

SENATOR FRELINGHUYSEN IN DISCUSSING THE CALDER RESOLUTION FOR THE EXAMINATION OF THE OFFICE OF THE ALIEN PROPERTY CUSTODIAN.

(*Congressional Record*, page 4555, August 25, 1919.)

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I want to refer just briefly to Mr. Palmer as Alien Property Custodian. That Mr. Palmer as Alien Property Custodian favored political friends in his appointments to enemy corporations is known to all of you. In my own State it was evident that the majority of these selected were selected because of their political affiliations. While such fact alone would not disqualify him, still there is one phase of his administration as Alien Property Custodian to which I desire to direct your particular attention.

From my study of the treaty with Germany I am convinced that it sets forth many and very serious liabilities for the United States, and that the only tangible asset which we are likely to have to meet our losses and those of our citizens will be the fund realized from the sale by the Alien Property Custodian of property belonging to Germans. I had always supposed that the fund would be kept for that very purpose, and always believed that it was to our inter-

est to realize as much as possible from German property. What was, and apparently still is, Mr. Palmer's view is set forth at page 126 of the record. I read therefrom:

I was willing to give them (Germans) a fair chance, give them an open sale, let everybody come and buy, but I was not going to hunt around to find the best time to place millions in the United States Treasury for these Germans to hire lawyers in America to come and fight for after the war was over.

That was his answer to the claim that property such as the Bosch Magneto Co. and International Insurance Co. had been sacrificed. Where did Mr. Palmer ever gain the notion that as Alien Property Custodian he was seizing property to be subsequently turned over to Germans? Perhaps he was one of those who believed that no matter what sacrifice we might make, we should not under any circumstances ask for any reimbursement for ourselves or for the losses of our citizens, and should even turn over to Germany the proceeds of all property which he might have seized. I repeat, so far as I can see, the only property we will have to meet our losses and those of our citizens is the Alien Property Custodian's fund and if it does not prove large enough, and we know well that it will not, I ask you: Is Mr. Palmer to be praised or blamed? From his testimony, as well as from certain provisions inserted in the treaty apparently at the suggestion of Mr. Bradley Palmer, one of the counsel for the Alien Property Custodian, but, who, I believe, is in no way related to him, Mr. Palmer feared that the United States would be called upon to account. No doubt it will. No matter what provisions may be in the treaty, Germany will almost certainly claim before the reparation commission that she must receive credit for the actual value of German property seized here and as proof that sales were not for actual value, she will point to Mr. Palmer's statements and boasts. Who will say that she will not be credited and the United States charged with

such actual value? Her financial condition and that of Europe in general is such that the strong chances are that she will be so credited and we will be correspondingly charged. Mr. Palmer has boasted that he "was not going to hunt around to find the best time to place millions in the United States Treasury for these Germans." Time will tell whether Mr. Palmer in neglecting to sell at the best times was acting for or against the best interests of his own country. Unless I am mistaken, time will prove that his administration was a liability.

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REMARKS OF SENATOR FRELINGHUYSEN ON THE FLOOR OF THE
SENATE IN SUPPORT OF THE CALDER INVESTIGATING RESO-
LUTION, SEPTEMBER 1, 1919.

(*Congressional Record, September 2, 1919, page 4897.*)

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I insist, however, that the management of the office of the Alien Property Custodian be investigated and to that Mr. Palmer objects. Notwithstanding Mr. Palmer's objection, I demand that that be done, and be done immediately. I claim that that is my right as a United States Senator whose honor and patriotism have been attacked by a high official of the Government.

Mr. Palmer's vindictiveness proves what, on its face, to me always seemed axiomatic, that a man should never be appointed to an office where he will have the right to pass judgment on complaints against himself. If the Attorney General displays such spleen against me because I opposed confirmation of his appointment, will even his most ardent friends contend that the claims against him as Alien Property Custodian will be judged impartially by him as Attorney General? You all know, but the public does not know, that under the law claims against Mr. Palmer as Alien Property Custodian must, in the first instance, be presented

to Mr. Palmer for allowance or disallowance. Why was he so anxious for the office of judge on claims against himself? Now, that he is secure in such office, why does he bombard those who urge that his administration of the office of Alien Property Custodian should be investigated? Why does he oppose investigation? What has he done? Does he think that by calling me pro-German he will check my efforts to have him investigated? Does he think that he will so discredit me that any attack I may make will not be listened to by the people of this country?

He knows that my ancestors have been identified with New Jersey since prior to the Revolution and that there is not a single drop of German blood in me. My demands for preparedness, my disgust with the administration for the policy of "too proud to fight," and my indignation about the "Lustania," and my contempt for Mr. Palmer and those like him who adopted the German doctrine that, as Americans were warned of danger, they should not have embarked on it, were well known when Germany forced war on us. I had no fear that anyone could say that I was pro-German, and I had no hesitation to demand justice for my constituents when those who had been pro-German went to extremes merely trying to throw dust in the eyes of the public and make our people forget their past.

I send to the desk a statement of Mr. Palmer's on the sinking of the "Lusitania," and ask that it may be read by the Secretary at this period of my remarks.

The President pro tempore: Without objection, the Secretary will read as requested.

The Secretary read as follows:

[From the New York Times, May 9, 1915.]
 Response to Telegraphic Request for Expression of Opinion as to
 What America's Attitude Should Be on the Sinking of the
 "Lusitania."

Stroudsburg, Pa., May 8.

The loss of American lives on the "Lusitania" is a matter of grave concern to our people, but it does not, under the circumstances, call for immediate drastic action on the part of the United States. It certainly ought not to embroil us in this foreign war.

The "Lusitania" was flying the British flag and carrying munitions of war for the support of a belligerent. Neutral passengers who, in the face of warnings, undertook this perilous voyage, certainly assumed some risk themselves, for which the entire Nation ought not to be asked to suffer. Of course, the destruction of a passenger boat is horrible. War is always horrible.

This method of fighting is not humane—it is hardly civilized, but there is no such thing as humanity in civilized warfare. Our people may have the greatest confidence that the President will deal with this admittedly serious situation with a wise forbearance, which will make for peace without sacrifice of any of our real rights.

A. MITCHELL PALMER.

Mr. Frelinghuysen: Mr. President, I did not oppose Mr. Palmer personally. For his information and that of this Senate and of the public I will say that I distrusted Mr. Palmer from the very bottom of my heart from the time that his weasel words about the sinking of the "Lusitania" were published in the New York Times. When later I discovered that he was an intermediary between the President and German agents and when I learned that he, as such intermediary, tried to palliate the sinking of the "Lusitania" and that he was willing to help Germany secure cotton from which to manufacture explosives to sink more innocent women and children, I confess I believe in his desire to become a judge of his own acts, and his opposition to investigation merely strengthens the belief that he is not a man to be honored with public office. Such a man, to divert attention from his record, is capable of running amuck when placed in such a position as Attorney General.

CONNECTS PALMER AS GO-BETWEEN WITH GERMAN AGENT.

At this point in my remarks I ask that there be inserted in the Record a statement of the conversation with Legal Agent Levy and Mr. John Simon, as reported in the memorandum translated from the German found in) Albert's dispatch bag, relating to Mr. Palmer, which has never been satisfactorily answered.

The President pro tempore: Without objection, it is so ordered.

The matter referred to is as follows:

Senator Dillingham: I desire at this time to place in the record a copy of a memorandum found in the dispatch bag lost by Dr. Albert and mentioned by Senator Frelinghuysen in connection with the publication in the New York World regarding an interview had by Mr. Palmer with the President. This has been furnished to me by the State Department, and is a translation of the original document, which was in German. I am informed by the State Department that no other paper relating to Gen. Palmer was found in the papers taken.

(The memorandum referred to is here printed in full, as follows:)

[Translation.]

New York, July 23, 1915.

Conversation With Legal Agent Levy and Mr. John Simon.

Levy advises regarding a conference with M. P. Thereafter M. P. saw Lansing as well as Wilson. He informed both of them that an American syndicate had approached him which had strong German relations. This syndicate wishes to buy up cotton for Germany in great style, thereby to relieve the cotton situation and at the same time to provide Germany with cotton. The relations of the American syndicate to Germany are very strong, so that they might even possibly be able to influence the position of Germany in the general political question. M. P. therefore asked for a candid confidential statement, in order to make clear not only his own position but also necessarily the political opportunity. The result of the conversation was as follows:

1. The note of protest to England will go in any event, whether Germany answers satisfactorily or not.
2. Should it be possible to settle satisfactorily the "Lusitania" case, the President would bind himself to carry the protest against England through to the uttermost.

3. The continuance of the difference with Germany over the "Lusitania" case is "embarrassing" for the President in carrying out the protest against England. He will not create the impression that the note to Germany and the protest to England are a "bargain," for he has undisputed American rights to uphold.

4. A contemplated English proposal to buy cotton in great style and invest the proceeds in America would not satisfy the President as an answer to the protest, because that refers to the violation of American rights and not only to a question of money. (N. B.—M. P. believes that it will be possible to bring this plan to the front with the assistance of the Southern Senators.)

5. The President, in order to ascertain from Mr. M. P. how strong the German influence of his syndicate is, would like to have trend of German note before the note is officially sent, and declares himself ready before the answer is drafted to discuss it with M. P., and eventually to so influence it that there will be an agreement for its reception and also to be ready to influence the press through a wink.

6. As far as the note itself is concerned, which he awaits, so he awaits another expression of regret, which was not followed in the last note. Regret, together with the statement that nobody had expected that human lives would be lost and that the ship would sink so quickly.

The President is said to have openly declared that he could hardly hope for a positive statement that the submarine warfare would be discontinued. Germany should only, out of consideration for friendly America, declare herself to be prepared to discuss with the United States and to work together with her to make impossible the destruction of American lives. Germany shall declare herself ready to make the strongest efforts to reach this goal, but to expect that America will work with her in this respect. The President is of the opinion that Americans who in the present situation take passage, on a munitions-laden ship "take their lives into their own hands." The President seems to expect that we ourselves shall set forth an agreement in the matter, possibly leaving out the principle and fall back upon the above-mentioned mutual endeavors.

The foregoing information sounds almost unbelievable. If it is correct, the President has not understood the German note at all, and, on the other hand, does not know what he says in his note. The diplomatic expressions and the meaning of a "deliberately unfriendly act" do not seem to be clear to him.

M. P. again emphasized how very much the President was upset and disturbed about the matter; how much he wishes to come out of the matter, how he emphasized that the note to England had been ready when the "Lusitania" case came up, and how he held out to M. P. that if he could clear up this matter how very much obliged to him he would be.

If the plan is to be carried through, he promises beforehand telegraphic connections with Germany.

Mr. Frelinghuysen: Mr. President, my business is fire insurance; that was and is well known. I believe that I understand my business. Had Mr. Palmer had his way, he would have crippled and ruined many American companies that had prewar contracts with German companies. I opposed him and sponsored one of my constituents who represented one of the largest New Jersey companies. Because we prevented his destruction of companies that had contracts with German companies, he now rails at both of us. He knows well that we cared nothing for the German companies and that all we sought was the safeguarding of American interests.

MR. PALMER RECEIVED GERMAN AGENTS IN HIS OWN HOME.

For my opposition to Mr. Palmer, both as a man and as Alien Property Custodian, I have no apologies. When I saw companies slaughtered, I could not approve. Perhaps he now realizes that it was not the Germans but Americans he was injuring by his foolish course, dictated by his wild desire to make all forget that he received German agents in his own house. If he was engaged in legitimate business, why did he receive them at his home and not at his or their office?

The fund derived from the proceeds of the sale of German property is the fund from which we hope to pay losses of our citizens. If it does not prove sufficient—and we know it will not—will Mr. Palmer be praised or blamed? Has he not boasted that he did not try to sell at the best times properties he knows were sacrificed? I have never said that he personally profited in a pecuniary way. Many got bargains. Many profited by their purchases—at figures much below real values. Does Mr. Palmer count them among his friends? In that way has he not profited? Does any one of you doubt it? In proportion to its size of population, my State received per-

haps the most attention from Mr. Palmer. With no taint of pro-Germanism, constituents, enraged at his conduct, appealed to me. My attention repeatedly was called to the experience, or rather lack of experience, of the agents selected by him to conserve and direct large industries. It is no secret, and all New Jersey knows that many of those appointed were personal or political friends of the secretary to the President. If Mr. Palmer expected that I would be afraid to insist that industries in New Jersey should receive fair play, he was mistaken.

I had no German record to haunt me, to make me countenance unjust and arbitrary conduct on his part. Justice will ultimately prevail. There are many who in their hearts distrust Mr. Palmer, his duplicity and his high-handed methods, as much as I do.

The New York World, in an editorial in its issue of February 28, 1919, said when the letters "M. P." were found in the dispatch of Dr. Albert:

The identity of "M. P." thus remains undetermined. But the mystery should be cleared up. Mr. Palmer himself should insist upon it in advance of his confirmation by the Senate. It is a small matter as between himself and others mentioned who shall be the next Attorney General. It is a great matter that the American people should know positively that "M. P." is not the next Attorney General of the United States. Who was "M. P."?

Mr. Palmer could not deny that he was the "M. P." referred to; in fact, he admits it. The New York World now is silent in its opposition. Were it not the time when

friends of the administration believe that they must close their eyes to its faults, would it be silent?*

DENOUNCES PALMER AS A DOUBLE DEALER.

Neither names nor threats can make me hesitate for a moment in denouncing the high-handed proceedings or from calling attention to the fact that the office of Alien Property Custodian was administered by Mr. Palmer in a high-handed way in the hope that thereby he would cause the public to forget that he had been the intermediary between the President and German agents. I opposed and will ever oppose Mr. Palmer:

First. Because he publicly proclaimed, as did the

*Editorial from New York World, January 27, 1921:
NOW, WHO WAS "M. P."?

It seems rather late in the day for Attorney General Palmer to have a patriotic fit over Samuel Untermyer's unofficial relations with the German Embassy previous to the entrance of the United States into the war, those relations having been a matter of public record for a period of five or six years. But inasmuch as Mr. Palmer is excited over Mr. Untermyer's conduct we trust that he will extend his investigation and try to establish the identity of "M. P."

Ever since The World published the Albert papers in the summer of 1915 we have been trying unsuccessfully to learn something definite about "M. P." It appeared from the papers of the German Commercial Agent that "M. P." was "unmistakably a man of great influence, enjoying easy access to the President of the United States and the Secretary of State." It appeared further that on July 23 German agents received a report of information in relation to the policy of the United States in respect to submarine warfare and the British blockade, said information having been imparted to the German agents by "M. P." after a conference with the President.

The World has never been able to find out who "M. P." was. The White House memorandum slips showed that Mitchell Palmer, now Attorney General, had an appointment with the President on July 22, but the mystery of "M. P." has defied solution for more than five years. As soon as Mr. Palmer has finished with Mr. Untermyer we are hoping that he will straighten out the "M. P." matter and discover the exact nature of the service that "M. P." rendered to the German agents.

Germans, that Americans, having been warned of danger, should not have sailed on the "Lusitania."

Second. Because he was an intermediary between the President and German agents willing and anxious to have the "Lusitania" incident condoned and to secure cotton for Germany, so that she might manufacture explosives to destroy more helpless women and children.

Third. Because in an endeavor to make the public forget his pro-Germanism he conducted the office of Alien Property Custodian in a high-handed manner.

Fourth. Because as Alien Property Custodian he did not secure the best possible prices for property seized by him, and as a result the alien-property fund will probably be insufficient to satisfy claims of our citizens.

Fifth. Because his administration of the office of Alien Property Custodian has profited the few who secured bargains at his sales, and was not for the benefit of the country as a whole.

Sixth. Because under the law the Attorney General is the office of the Government to pass on claims against the Alien Property Custodian; and, in my opinion, aside from the impropriety of an accused being his own judge, it is not fair to compel claimants who have had bitter quarrels with Mitchell Palmer as Alien Property Custodian to now present their claims against him as Alien Property Custodian to him as Attorney General.

In conclusion let me say that Mr. Palmer resents criticism and will not hesitate to use all the great power of his office to intimidate those who oppose him. His contact with German agents has taught him the power of Bureaucracy. If he has nothing to fear, why does he oppose investigation and abuse those who urge it? Why,

having been Alien Property Custodian, did he fight for the office of Attorney General, so that he could be the judge of claims against himself? Why did Mr. Bradley Palmer urge in Paris a provision in the treaty white-washing the Alien Property Custodian?

Mr. Palmer has indeed learned from the German agents.

He is more Prussian than the Prussians.

I denounced the Prussians and their ways, and no one of their disciples can intimidate me.

(Congressional Record Continued, Page 4899 of Issue Dated Sept. 2, 1919.)

There was a colloquy on the floor of the Senate on the above date between Senator Frelinghuysen and Senator Underwood as to the nature of the hearings by the Subcommittee of the Judiciary Committee of the Senate on the nomination of Mr. Palmer for Attorney General. Senator Underwood seemed to indicate in his remarks that an investigation as to the Alien Property Custodian acts of Mr. Palmer had been made; whereupon occurred the following colloquy:

Mr. Frelinghuysen: I should like to ask the Senator from Alabama a question. Does the Senator know whether there were any witnesses called before that committee under subpoena?

Mr. Underwood: I think, if my understanding is correct, that most of the witnesses were furnished or proposed by the Senator from New Jersey.

Mr. Frelinghuysen: That is not so, and it does not answer the question. Were any witnesses called by the committee under subpoena?

Mr. Underwood: I do not think so. My understanding of it is—I may be mistaken; the Senator from New Jersey can correct me if I am mistaken, and there are other Senators on the committee—but my understanding is that this charge—not in the way of a charge, because the Senator denied that, but by way of a suggestion—was made by the Senator from New Jersey against the confirmation of Mr. Palmer.

The Senator from New Jersey, if I am not mistaken, suggested to the committee the names of the witnesses he wanted examined. Is not that correct?

Mr. Frelinghuysen: I mentioned several men who desired to appear.

Mr. Underwood: That is correct.

Mr. Frelinghuysen: I also requested that the committee call a number of witnesses; and, at the request of the ex-attorney general of New York that certain witnesses be called to prove, as he stated, that Mr. Palmer had favored friends in the sale of these properties, I requested the committee to call those witnesses, and they failed to do it.

* * * * *

NOTE BY THE EDITOR.—The writer was present during the entire period of the hearings above referred to, and no charges against Mr. Palmer personally were made by any person or interest. Information, however, was laid before the Committee as to seeming favoritism in the disposal of property and irregularities of advertising and disposition of same at inadequate prices. The discussion then drifted off with Mr. Palmer indulging in long talks, accusing ex-Attorney General Lewis of misquoting laws, etc. No cross examination of Mr. Palmer by Mr. Lewis was allowed by the Committee and finally General Lewis proposed and placed in the record his request for the summoning of witnesses. Objection was made by Mr. Palmer that its allowance would call for some 40,000 books, and then the discussion was taken up with Attorney Harold Remington on matters of law and decisions and later on went into insurance matters. Inasmuch as the summoning of witnesses was not allowed (the Committee seeming to think that it was not either within its power or purview its functions) General Lewis refused to prefer charges. The report of the sub-committee on this point will be found in the frontispiece of this volume. See also Senator Frelinghuysen's further reference to the matter on another page.

Senator Underwood on September 19, 1919, while debating the Calder Resolution upon the floor of the Senate, inserted in the Record, page 5973, the following as part of a document issued by the German Foreign Office and forwarded to this Government by their representative in Berlin under date of July 26, 1919:

* * * * *

REPORT OF GERMAN ALIEN PROPERTY CUSTODIAN.

“The fact that the greater part of German property in North America was liquidated and had already before the treaty of peace been sold to purely American interests, Mr. Palmer justifies on the ground that German authorities had previously acted in similar fashion toward American property. But, as a matter of fact, Mr. Palmer must have known, as it was frequently reported to America through neutral channels, that although the German Government allowed itself to resort to reciprocal regulations after gaining information of American measures, that in fact during the whole war no American private or company property was liquidated. The Imperial Government officially put this in conformity to the facts on gaining knowledge of the Palmer report.

“The real motive of the Palmer proceedings comes to expression where this ‘custodian’ of enemy property declared it to be his task ‘to gain hold of and destroy the German industrial army on American soil.’ It is significant of the spirit of the whole report that Palmer speaks of an industrial army. But when he declares that the most important German investment in North America had served for the production of war material, and then as proof of this astonishing assumption presents a list of firms which, according to his own statement, principally produce magnetos for motors, woolen cloth for women’s clothes, chemical articles such as dyes and farmers’ phar-

maceutical preparations, surgical instruments, and similar 'necessities of war,' one plainly sees how foundationless is his suspicion. We might assume that war sentiment had not so far suppressed his American readers' power of judgment that they should not recognize the unsoundness of his accusations.

"In another paragraph the report says 'when it is remembered that Germany's hopes for the future laid in the industrial conquest of this continent—a conquest which Germany believed in the year 1914 it was near to—then one may easily recognize * * *.' As proof of this remarkable assumption it is brought forward that the value of German ownership as it appeared on the books of the Palmer administration amounted to an estimated value of \$326,855,090.39, the proceeds of 17,339 sequestrations. Besides this the number of undertakings intrusted to him for Germany, Austria-Hungary, Bulgaria, and Turkey, all in all, is given at 32,296. Mr. Palmer hopes to obtain therefrom, all told, \$700,000,000. That is to say, the highest sum that is estimated for the undertakings of the Central Powers does not reach one-half the value of a single American industrial company such as the United States Steel Corporation and does not approach 1 per cent. of the aggregate value of American industry. The report may therefore be doing American enterprise an injustice when he, in face of such a proportion, rises to the expression, 'the development of industry, commerce, and science in this country, which was oppressed and throttled by the

attitude of German industrial interests, will now have a free hand.'” *

* * * * *

NO INVESTIGATION OF CUSTODIAN'S OFFICE.

*Senator Frelinghuysen (on the Floor of the Senate,
Sept. 19, 1919):*

“An investigation¹ by a subcommittee of the Judiciary Committee has been spoken of. The subcommittee were not investigating the Alien Property Custodian's office. They were making an inquiry into the fitness of Mr. Palmer to be Attorney General. While I have no criticism to make against that subcommittee, there was no difference of opinion, except that I felt, and I still feel, that witnesses should have been called to prove or disprove the statements made before the subcommittee by Mr. Palmer and those who were criticizing him. However, the subcommittee felt, and I submitted to their judgment, that it was not necessary to subpoena witnesses, or that it did not come within their power and scope.”

* * * * *

(Congressional Record, Sept. 19, 1919, Page 5976.)

Mr. Wadsworth: Mr. President, will the Senator yield a moment?

Mr. Nelson: Certainly.

*NOTE.—According to the testimony of Mr. H. E. Ahern, Managing Director Alien Property Custodian's office, given before the Interstate and Foreign Commerce House of Representatives, May 25, 1920, there appeared to be a balance of property held by him of \$260,000,000, plus \$161,000,000 cash. According to newspaper accounts of recent date they have dispersed \$117,000,000 under various rulings or laws, leaving approximately only a balance of \$309,000,000 all told.

¹NOTE.—On this point see inside page of front cover. It is also discussed elsewhere in this volume.

Mr. Wadsworth: Did I understand the Senator to say that, in his judgment, the Alien Property Custodian had used his office for political purposes?

Mr. Nelson: I understand that he has used it as a good many other good citizens do in the matter of appointments to places; they took to their own friends and party affiliations. I do not think even the Senator from New York himself, in his political career, can say that he has not favored his political friends instead of his political enemies.

Mr. Wadsworth: The "Senator from New York" is not submitting himself to cross examination; but the "Senator from New York" may remind the Senator from Minnesota that the office which Mr. Palmer held was that of a trustee for the people of the United States in time of war, which, to my mind, puts an entirely different color on this whole question; and I was interested to hear the Senator from Minnesota intimate, at least, that the Judiciary Committee had reached the conclusion that the Alien Property Custodian had used the office for politics in time of war.

Mr. Nelson: No; the committee did not reach that conclusion. That is my individual opinion.

UNDERWOOD'S STATEMENT MADE IN DEBATE ON CALDER RESOLUTION TO INVESTIGATE PALMER'S ADMINISTRATION OF ALIEN PROPERTY CUSTODIAN'S OFFICE.

(Sept. 19, 1919. Congressional Record, Page 4899.)

Mr. Underwood: That is the position of the Attorney General. More than that the investigation proposes to have an auditing made of all the books of the Alien Property Custodian. There are 40,000 different accounts, 40,000 different pieces of property taken, valued in the neighborhood of \$750,000,-

000. I think the auditing of those accounts ought to be made, the Government thinks it ought to be made, the Attorney General of the United States thinks it ought to be made, and it is being made to-day. A company of bonded accountants are auditing and passing on those accounts to-day. It will probably be 60 or 90 days before they complete their report. It will cost not less than \$150,000 to do the work. It is being done in the interest of the Government by a bonded auditing company, and why should Congress duplicate that work until that report is made? Why should it spend another \$150,000 or \$200,000 in digging into those books when in 60 or 90 days the audit will be made and published? I can see no necessity unless it is for the purpose of hiring auditors to act as a smelling committee to try to find some reason to get this property back into the hands of the Germans from whom it was taken. That is all there is in it. That is all there is in the charges that were made against the Attorney General of the United States.*

MR. PALMER'S ORIGINAL ATTITUDE AS TO THE MEANING OF THE TRADING WITH THE ENEMY ACT WHEN HE FIRST ASSUMED OFFICE.

Statement by Custodian.—The legislation was approved and became effective October 6, 1917. It created the office of Alien Property Custodian, to which Hon. A. Mitchell Palmer was appointed a couple of weeks later. The Official Bulletin of November 14, 1917, No. 159, contained

*NOTE.—A careful inquiry fails to reveal (although one year and four months have elapsed since the above promise to audit "and publish" was made) any such report, and further a careful search of the records of the committees of both Houses charged with the duty of supervising appropriations does not disclose that the Alien Property Custodian was ever given the right to pay any money for such an audit.

an official announcement of Mr. Palmer which, in part, reads as follows:

"The purposes of Congress are to preserve enemy-owned property in the United States from loss and to prevent every use of it which may be hostile and detrimental to the United States. * * * The Alien Property Custodian exercises the authority of a common-law trustee; there is no thought of confiscation or dissipation of property thus held in trust."

* * * * *

CIRCULAR OF INFORMATION.

The above was the caption of a circular issued by Mr. Palmer and widely distributed immediately after his appointment as Alien Property Custodian (known as form 108) under the sub-title "note" he says:

"An American citizen in Germany may be an enemy under the act, whereas a German citizen in the United States (unless interned) is not."

Under "Purpose of Act" he says:

"The purpose of the act is to prevent aid or comfort to the enemy or allies of the enemy, to make available for war financing any funds in this Country belonging to enemies, and to safeguard property of enemies for such disposition as Congress may deem advisable after the war is over."

Under the "Custodian has wide discretion" he says:

"The Trading With The Enemy Act makes it possible for the Government to use the property of enemies without confiscating it. The Custodian has a wide discretion with respect to such use. Busi-

ness enterprises may be taken by the Custodian but the business operated under the supervision of the Custodian, almost as before such changes."

Under "Use of depositions" he says:

"In order that the great volume of business may be carried on as economically and effectively as possible * * * as little disturbance as possible will be caused by the taking over the properties by the Custodian." * * *

HOW MR. PALMER CHANGED HIS IDEAS. HIS OWN WORDS WHEN TRANSMITTED. THE ALIEN PROPERTY CUSTODIAN REPORT TO CONGRESS.

(Covering 1918 and up to February 22, 1919.)

The following extract will serve to show how Mr. Palmer, after he obtained the power he sought, interpreted in his official capacity the Trading With the Enemy Act.

Page 7:

The office of Alien Property Custodian was created by an act of Congress known as the trading-with-the-enemy act, approved October 6, 1917. Under this law and Executive orders issued in pursuance thereof, it became the duty of all persons in this country having the custody or control of any property of whatsoever nature belonging to, held for, or owing to an enemy person, to make report thereof to the Alien Property Custodian, by whom

NOTE.—It will be observed that the above circulars breathe the true intent of the Trading with the Enemy Act and gave notice to the world that the Custodian intended to continue observing the same along those lines. The following will show, however, that later on he became, as one of his critics has said, "Drunk with power," and sought and, as he thought, obtained legislative authority to carry out his designs.

it was to be administered with all the powers of a common-law trustee.

* * * * *

Page 9:

The office of Alien Property Custodian was filled by the appointment of the President on October 22, 1917, so that the office has been in operation about 16 months. At the close of business on February 15, 1919, 35,400 reports of enemy property had been received. The property of each enemy person is treated in the office as a trust and administered by an organization which is built upon the general lines of a trust company.

* * * * *

With a view of resuming the ante bellum status at some time in the future, we have not hesitated to cut through the contracts, conveyances, obligations, and trust agreements by which the parties have sought to conceal their real purposes and have declared the property to be enemy owned. In most cases, after our thorough investigation, confessions of the parties have verified our suspicions and fortified our conclusions.

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Page 13:

Property in his hands is in custodia legis in a large sense, and the Government can be relied upon at the conclusion of the war to make adequate provision for the just disposition and distribution of all this property.

* * * * *

Page 14:

These investments were largely in industries. As to these no obligation is owed to their private owners to

conserve or care for them with a view of ever returning them in kind.

* * * * *

Page 15:

MR. PALMER SAYS HE BECAME A WARRIOR.

When the Congress passed the amendment giving to the Alien Property Custodian the general power of sale, it was with the purpose in mind that the German industrial army on American soil should be captured and destroyed. I have proceeded with all expedition possible to this end. Instead of permitting myself to become a mere conservator of enemy property, I have tried to make the trading-with-the-enemy act a fighting force in the war. Germany very promptly recognized the tremendous import of the new aspect of things when the sales amendment was adopted and a general program of sale of enemy-owned industries was announced. She bitterly protested through official channels that the plans of the Alien Property Custodian "were designed to destroy Germany's economic existence upon this continent."

When it is recalled that Germany's great hope for the future lay in the industrial conquest of this continent—a conquest which she believed in 1914 she was in a fair way to accomplish—it will readily be seen with what dismay her financial and commercial interests must have viewed the sudden and direct offensive which was designed to forever loosen the grip which she had obtained upon American industry and commerce.

Our selling program was accompanied by fair notice that, while we would after the war account for the proceeds of sales of enemy property, the properties them-

selves would be separated from their former enemy owners forever.

* * * * *

Page 16:

There can be no question either as to the legality or the wisdom of the announced policy of the Alien Property Custodian to continue the liquidation and sale of enemy-owned business in his hands. In the first place, Germany and the United States are still at war. The trading with the enemy act is still in force.

* * * * *

Page 17:

Again, enemy property which is now being sold was all demanded and taken over by the Alien Property Custodian many months before the armistice was signed, and the jurisdiction of the Alien Property Custodian having attached there can be no legal reason why the signing of the armistice should operate to prevent the change of character of that property which is the only effect of the sale.

* * * * *

Page 17:

But the policy of the Alien Property Custodian in continuing these sales is based upon very much broader considerations than the technical right to hold the sales growing out of either procedure or a continuance of a state of war.

* * * * *

Page 17:

Besides that, Germany has sequestered all of the American property within the bounds, and has liquidated or sold to German subjects a considerable portion thereof.

It is not conceivable that this property will ever be returned to its American owners in kind. Under the conditions now prevailing in what was once the German Empire, American investors in Germany will neither expect nor desire to continue business where they left off when the war began. Certainly they will not be put by their own Government to the necessity of seeking redress from the German courts or the German Government in their claims for property taken during the war under German laws. They confidently rely upon their own Government, whose traditional policy has been to take care of the claims of its own nationals against a belligerent.

* * * * *

Page 17:

HOSTILE HUN WITHIN OUR GATES.

I have already referred to the importance and necessity of securing American industrial independence by dislodging the hostile Hun within our gates, whose methods are such as to unsettle the future peace of the world.

* * * * *

Page 16:

In the meantime, it is the large and broader view of the great industrial offensive which during the months of war this office has been privileged to wage against enemies abroad and enemies at home that I desire particularly to present.

* * * * *

It is not necessary to forecast the treaty of peace to hazard the prophecy that all American citizens whose property has been taken in enemy countries will under some form of administrative law present their claims for allowance to this Government, which will see that they

are properly reimbursed for their losses. The United States will hardly be expected to pay these losses out of its own funds when it has at hand more than sufficient property belonging to German subjects whose claims against us will doubtless be provided for by their own Government in the same manner.

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Page 22:

MR. PALMER'S MODE OF PROCEDURE.

After the Trading With the Enemy Act was amended on March 28, 1918, and the Custodian was thereby given the power to sell enemy property, as though he were the owner thereof, the Bureau of Sales was created to sell those businesses and interests therein which the Custodian determined should be sold.

There are five ways in which property is received by the Custodian:

1. In response to a formal demand.
2. By order or decree of a court.
3. In pursuance of a petition by the holder of such property, to be permitted to turn it over.
4. In pursuance of a license by the War Trade Board in connection with liquidation.
5. In pursuance of a license of the Treasury Department in connection with the supervision and liquidation of enemy insurance companies.

* * * * *

PATENTS.

Page 60:

The amendment of November 4 to the trading with the enemy act presented for the first time an opportunity for

what appears to me to be the most important piece of constructive work which has been possible in my department. Until the enactment of this amendment it had not been possible to take over German patents.

* * * * *

Page 60:

The idea was accordingly conceived that if the German chemical patents could be placed in the hands of any American institution strong enough to protect them, a real obstacle might be opposed to German importation after the war.

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The Chemical Foundation, however, should prove a power sufficient to discourage in a most effective manner any German attempts in this direction.

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THE METAL SITUATION.

Page 63:

The Alien Property Custodian has taken over the German-owned metal concerns in the United States, and, by disbanding some and Americanizing others, it is believed that the German influences in our metal market have been completely eliminated.

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Page 98:

but also to eliminate as far as possible for all time German interests and German influences which existed and had been exercised in this country through the control of these three companies, and it is believed that the disposition made by the Custodian of the German interests in these companies has been such as to effectually eliminate all

present and, it is hoped, future German control in the metal market and the metal industry of this country.

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Page 101:

thoroughly Americanizing two of these concerns and liquidating the third, thereby entirely eliminating German influences in our metal markets and our metal industry.

The German metal octopus has spread his tentacles across the ocean and over the United States into Mexico and South America, but for the present surely, and for all time it is hoped, he has been driven back and a wall of Americanism erected which, it is hoped, he will never be able again to scale.

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Page 93:

We are not alone in our fear of German commercial aggression, nor in our desire to eradicate the German influences. England has gone even further than we have.

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WIRELESS.

Page 107:

The effect of the work of my department is that Germany has been wholly excluded from the wireless field in America; has been substantially hampered in communication by wireless to the south; and can only after long effort and at great expense and by development of a new system, recover (if she can recover at all) an independent position in the Western Hemisphere.

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MAGNETOS.

Page 108:

Of all the magnetos produced in America at this time, at least half were made by two companies—The Bosch Magneto Co., and the Eisemann Magneto Co.

Page 110:

The acquisition of the stock in these two companies enabled me to appoint boards of directors and take over the plants of the three corporations concerned about May 1, 1918, since which time, they have been operated under my direction by the boards thus appointed. Thereafter, I placed at the disposal of the Government, for war work, all the factories in question, and to make this offer effective named among the directors of the companies representatives of the War Department. The Government took full advantage of this opportunity and when the armistice was signed, 85 per cent. of the Bosch factory and almost an equally large percentage of the capacity of the other plants were engaged in direct or indirect war work at prices which represented a great saving to the United States.

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Page 111:

This was in itself a valuable result, but, it was the duty of the Custodian to go still further. It was incumbent upon him in execution of the spirit as well as of the letter of the Trading with the Enemy Act to "Americanize" the industry. This has been accomplished by means of public sales of every enemy-owned or controlled share in the two magneto concerns, and the work will shortly be completed by the disposal of the shares in the Boonton Rubber Manufacturing Co. The stock of the Bosch Magneto Co. passed

into American hands in December, 1918, and the enemy shares in the Eisemann Magneto Co. became American-owned in February, 1919. The total sum realized at these sales was \$5,057,500.

Page 108:

Both the Bosch Magneto Co. and the Eisemann Magneto Co. were New York corporations. The directors and officers of each were all either American citizens or German aliens resident in this country. The stock ownership of the Bosch Magneto Co. appeared on the face of its records to be almost entirely in American hands, while of the 2,000 shares of the Eisemann Magneto Co., only 600 shares—the property of Ernst Eisemann, the chief owner of the house of Ernst Eiseman & Co., C. M. B. H., of Stuttgart, Germany, were unquestionably held by other than American citizens. The Bosch Co. certainly, and the Eisemann Co., probably, then appeared to be beyond the reach of the Alien Property Custodian, and it was only after a protracted and laborious investigation that the Bureau of Investigation was able to show proof that the Bosch Magneto Co. was 100 per cent. and the Eisemann Magneto Co., 75 per cent. German owned.

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Page 109:

The importance of these two companies attracted attention from the beginning of the work of my department. The case, however, so far as the Bosch Magneto Co. was concerned, presented most unusual difficulties. Understanding as we now understand, from experience, German methods and ideals in business, it was natural to expect to find concealed ownerships behind the apparent stockholdings and attempts to conceal and cover up by apparent transfers the real interests. In the Bosch Magneto Co.,

however, the majority of the stock had stood, ever since 1909, in the name of one of the resident officers of the company, who at first insisted that he was the real owner. Robert Bosch, of Stuttgart, Germany, and one Klein also of—, Germany, although between them they owned all the stock of the company, had only 50 shares standing in their names on the books. These and 45 other shares which stood in the name of Carl Schurz, a New York lawyer, but which were admittedly held for Germans, were all of the shares which on the face of the records appeared to come within the purview of the trading with the enemy act and were all that were reported by the company to the Custodian. A searching investigation, however, brought out a large number of facts which indicated that the record owner of most of the stock was a mere dummy, and eventually in March and April, 1918, confessions were obtained from two of the active officers of the company which demonstrated that all the remaining shares in the company were owned beneficially by Robert Bosch and that 900 shares in the Eisemann and 1,501 shares in the Boonton Rubber Manufacturing Co., were similarly owned. These confessions enable me to take over the stock in question.

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Page 111:

In connection with the sale of the enemy stock in these companies, the enemy-owned American patents, important to, and used with the business, were also sold. These patents, of which there was a considerable number, cover every conceivable phase of invention and improvement in the art and embody the ideas of the best and most experienced German engineer in this branch of electrical science. By their seizure and sale in conjunction with the producing units—the factories—the American purchasers

and the industry generally are insured against German competition within the field covered by the patents.

As a result of these proceedings, the magneto industry of this country is now wholly in American hands and is unfettered by patents held by or for the benefit of enemies. It seems reasonably safe to predict that the business will remain indefinitely 100 per cent. American.¹

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FUR INDUSTRY.

Page 112:

In no trade has the result of the war been of greater consequence to the country than in the fur industry.

With the elimination of the foreign market by the war, with the elimination of German capital by the enforcement of the provisions of the trading-with-the-enemy act, these are net results:

1. American furs dressed, dyed, manufactured, and sold in America.
2. Russian, Chinese, Japanese, and Siberian markets

¹NOTE BY THE EDITOR.—Mr. Palmer sold this plant to his friend and business associate Martin E. Kern through a dummy named Griffith. At the time of seizure he had placed one Arthur T. Murray in entire charge of the plant. Murray was also a business associate of both Kern and Palmer in the Bethlehem Motors Corporation, of which Murray was president and Kerns treasurer. Palmer had acted as attorney. As it was necessary to use some one as attorney who could be trusted in such a huge transaction Mr. Palmer introduced his life-long and trusted friend, J. Harry Covington of Washington to Mr. Kerns and thereafter and up to the present time Mr. Covington has acted as Mr. Kern's personal attorney in the Bosch Magneto transaction. Prior to that, however, Mr. Covington had acted as one of the attorneys for the Alien Property Custodian (Mr. Palmer) in the same matter for which he received \$1,000 as per the "Statement of Attorneys employed By the Alien Property Custodian" submitted to the Committee on Appropriations, 66th Congress, 1st Session, printed page 23.

taken from Germany, and direct connection established with the United States.

3. The sale through American auctions of the raw catch, both foreign and domestic, and the consequent creation of the American fur market of the world.

4. The realization of the fur merchant of the actual motive of Germany.

5. The complete elimination of German influence in the American fur trade.

It is inconceivable that the American fur merchant will ever permit any future participation by Germany or the Germans in this industry which the war has brought into its own.

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DIVISION OF PATENTS.

Page 182:

No demand was made for a patent rights prior to the amendment of the act approved November 4, 1918.

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Page 186:

Acting under the provisions of the amendment of November 4, 1918, the Custodian has proceeded to Americanize thoroughly all of the industries sold by him, by relieving the industries of the burden of licenses entered into prior to the war, and by conveying to the purchaser the patents through which the enemy companies controlled their American subsidiaries. This procedure has the effect not only of cutting off the payment of tribute to the enemy companies under licenses, but also places in the

hands of the American purchasers the weapon to protect the industries from enemy invasion after the war.

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Page 187:

It may be stated, by way of example, that in the case of the Bayer Co. (Inc.), approximately 550 enemy-owned patents were sold with the stock of the company to the American purchaser; in the case of the Bosch Magneto Co. approximately 130 patents were sold; and in the case of C. P. Goerz American Optical Co. about 80 patents will be sold when the stock of this corporation is disposed of by the Custodian.

Page 218:

SELLING DIVISION.

To this department are referred corporations and firms that have been recommended for sale by the Washington sales committee.

The duties of this department are all outlined in the organization plans of June 6, 1918, that has been made a part of this report.

Properties that have been sold by this department are as follows:

Orenstein-Arthur Koppel	\$1,312,000
G. Siegle Co.	509,600
Berger & Wirth (Inc.)	41,025
H. Koppers Co.	302,250
A. W. Faber. (Bid rejected by order of the President.)	
Bosch Magneto Co.	4,150,000
F. Speidel Co.*	313,000

*[Note to the Speidel case above mentioned.]

The sale of the Speidel Co. was a gross abuse of power on the part of the Alien Property Custodian. This concern was a partnership and William Forstner, the controlling partner and owner, was arrested and put in jail and kept in solitary confinement for many months. While there he was repeatedly importuned by Government representatives

Dresden Lace Works	125,000
Garfield Worsted Mills	1,661,476
Passaic Worsted Spinning Co.	859,908
Gera Mills	1,525,000
New Jersey Worsted Spinning Co.....	2,005,000
The Bayer Co. (Inc.) and Synthetic Patents Co. (Inc.)	5,310,000
Stollwerck Bros. (Inc.)	1,503,390
International Ultramarine Works.....	255,000
American Lava Co.	80,000
Bronze Powder Works	217,500
Messer Manufacturing Co.	12,500
White Metal Manufacturing Co.....	270,000
George Benda	135,000
G. Siegle Co. (patents)	100
Gerhard & Hey (Inc.)	100,500
New Brunswick Chemical Co.	22,100
Golde Patent Manufacturing Co.	33,750
Eisemann Magneto Co.	907,600
Heyden Chemical Works	605,000
International Textile (Inc.)	1,212,000
Becker Steel Co. of America	20,000
American Pyrophor Co.	85,000
Bauer Chemical Co.	150,000
F. Ad. Ritcher & Co.	155,000
	<hr/>
	23,878,699

Besides the work of preparing and selling the above firms and companies, this department has completed an immense amount of preliminary work on other firms and companies, the dates of sale of which have already been announced or will be in the near future.

to sign a bill of sale for \$400,000 which was to be immediately forthcoming to him in cash from his principal trade rival.

This bill of sale also contained the further condition that he should not again engage in the jewelry business for 20 years.

Mr. Forstner spurned the offer and demanded to know the nature

of the charges against him, or that he be tried or indicted or properly interned. When his wife, who had been very ill in a hospital, had sufficiently recovered to appreciate her husband's strange and appalling plight she demanded that he be released from this unwarranted confinement, tried on proper charges or released. He was finally sent to the internment camp at Oglethorpe, Ga. While there his business and property, worth over a million and a quarter dollars, was sold to J. F. Sturdy's Sons Co. for \$313,000, the above trade rival, and the same firm which through the Government representative had made the above offer of \$400,000 and had prepared the above bill of sale for his signature while in solitary confinement.

The following is a statement contained in a memorandum of the Forstner case made by Mr. Justice Hahn, now of the Superior Court, State of Rhode Island, at the time of the incarceration of Mr. William Forstner, and when he was acting as his attorney in May, 1918:

"Mr. Forstner has been in the Rhode Island State Prison detained as a common criminal, without the rights of most criminals, for a period of ten (10) weeks, during which time counsel has been through every aspect of the business of the F. Speidel Company, all its export business, all its dealings with exporters, and, so far as can be learned, there has been no violation of any law. Letters and documents which are available and have been presented to the authorities in Washington, it is contended conclusively show this to be a fact. The sufferings of this man, the illness of his wife and all of the misfortunes which have overtaken him since the 30th day of April of this year, would be almost enough to ruin the mind and constitution of the average man. He has stood it all, and the fact that the prospective loss of a few thousand dollars may stand in his way to obtaining complete justice at some future time, is not an element which appeals to him in any manner whatsoever. He wants to be ready when the time comes to ask of any Government which expresses its willingness to reimburse those who have lost through the war, to reimburse him not only for his financial loss (which was through no fault of his own) but also for the unutterable suffering that he has been obliged to endure since his incarceration."

Reference to this case will be found on page 8 in the testimony of Mr. Lucien H. Boggs, Special Assistant U. S. Attorney General, before the Committee on Interstate and Foreign Commerce, House of Representatives, May 25, 1920, who advocated the passage of H. R., 1420.

PARTNERSHIP.—As some of the partners in the Speidel Co. were not enemies, it is believed their case could be covered by the recent decision of Mr. Justice Bingham of the Federal Court at Boston, in the case of Richard Mayer vs. The Alien Property Custodian, wherein it was held that a resident partner (not an enemy) is the proper person to wind up a partnership and that until such time and until such event occurs the Alien Property Custodian has no right to seize any part or parcel of the partnership assets.

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Name.	Date of sale.	Con- firmed.	Shares sold.	Purchaser.	Purchase price.
Bosch Magneto Co..	Dec. 7	1919. Jan. 17	250 shares and patents.	H. C. Griffiths, agent for Martin E. Kern, Allentown, Pa., Hornblower & Weeks, Chase Securities Cop. (2 and 5).	4,150,000
F. Speidel Co.....	do	1918. Dec. 13	Copartnership assets, patents, etc.	Leach & Garner Co., J. F. Sturdy's Sons Co., Attleboro, Mass. (2 and 5).	313,000
Dresden Lace Works (Inc.).	1918. Dec. 7	1919. Jan. 17	1,250 shares common	Richard Muller (2 and 5)	\$125,000
Garfield Worsted Mills.	Dec. 9	1918. Dec. 13	5,834 common, 125 preferred, 6,027.2 second preferred.	John H. Love, L. H. Hall, A. Schmidt, W. Graupner, P. G. Ruprecht (2 and 5).	1,661,476
Passaic Worsted Spinning Co.	Dec. 10	1919. Jan. 17	4,236 common.....	General Worsted Co. (2 and 5).	859,908
Gera Mills.....	do	do	11,143 shares common, 5,000 shares preferred.	Christian Bahnsen, Ladenburg, Thalman Co., Chase Securities Corp., F. B. Keech Co., Chas. M. Howe (2 and 4).	1,525,000
New Jersey Worsted Spinning Co.	do	do	1,129 common, 375 preferred.	Christian Bahnsen, Otto Pressler and associates (2 and 4).	2,005,000
The Bayer Co. (Inc.), and Synthetic Patents Co. (Inc.).	Dec. 12	do	2,250 shares preferred, 5,250 shrs. common, 500 of Synthetic Patents Co. and other property.	Sterling Products Co., Wheeling, W. Va., Grasselli Chemical Co., Cleveland, Ohio (2 and 4).	5,310,000
Stollwerck Bros. (Inc.).	Dec. 21	do	6,000 preferred, 6,165 common.	The Touraine Co., A. M. Duane, president (2 and 4).	1,503,390
International Ultramarine Works.	Dec. 20	Jan. 31	1,500 shs. common.	Fletcher M. Cook, Wm. P. Talbot, Frank A. Mayer (2 and 4).	255,000
American Lava Co..	Dec. 23	Jan. 17	800 shares.....	Paul J. Kruesi (2 and 4).	80,000
Bronze Powder Works Co.	Dec. 28	do	2,500 shares.....	W. C. Cabell, James A. Hanlon, Wm. A. O'Brien, Eric Windmuller (2 and 4).	217,500
Messer Mfg. Co....	Dec. 30	Jan. 31	185 shares and patents.	Adolf P. Link (2 and 4).	12,500
White Metal Mfg. Co.	1919. Jan. 18	do	Asset sale.....	Chas. A. Fulle (2).....	270,000
George Bonda	do	do	do	Thomas Hillery (2).....	135,000
G. Siegle Co., patents.	Jan. 24	do	Patents	Coffin & Co. (2).....	100
Gerhard & Hey (Inc.).	Jan. 27	.....	1,000 shares.....	Pyne, Kendall & Hol-	100,500
New Brunswick Chemical Co.	Feb. 5	.....	775 shares.....	Hugo Koblenzer (6).....	22,100

Name.	Date of sale.	Con- firmed.	Shares sold.	Purchaser.	Purchase price.
Golde Patent Manu- facturing Co.	Feb. 6	.....	750 shares common, 250 shares pre- ferred.	G. W. Thurnauer (6)....	33,750
Eisemann Magneto Co.	Feb. 11	.....	1,500 shares.....	G. E. Matthies (3).....	907,600
Heyden Chemical Works.	Feb. 14	.....	747 shares.....	Monsanto Chemical Wks.	605,000
International Textile (Inc.).	Feb. 15	.....	2,298 shares.....	Frank Miller	1,212,000
International Textile Inc.).	Feb. 15	.....	2,298 shares.....	Frank Miller.....	1,212,000
Becker Steel Co. of America.	Feb. 20	.....	2,500 shares.....	W. R. Comfort.....	20,000
American Pyrophor Co.	Feb. 24	.....	500 shares.....	Alexander Harris.....	85,000
Bauer Chemical Co. (Inc.).	Feb. 25	.....	1,000 shares.....	Pfeiffer & Merner.....	155,000
F. Ad. Richter & Co.	do	1,000 shares.....	G. U. Tompers.....	155,000
Total					23,878,699

BUREAU OF LAW FOR THE YEAR 1918.

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Page 234:

The property has come into the hands of the Custodian not as on the creation of a voluntary trust, after mature and careful deliberation on the part of the creator of the trust, but suddenly, and frequently involuntarily, this property in the possession of the Custodian has often been involved in the deepest complications.

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MR. PALMER CONSIDERED HIMSELF A JUDICIAL OFFICER.

Page 235:

It was further argued that the Custodian was not a judicial officer and that any other construction compelled the delivery of property to the Custodian on his mere *ipse dixit* and on what might be an *ex parte* investigation and that this would be a violation of the due process clause

of the Constitution of the United States. The result of such contentions would have been that the Custodian would have been put to the trial of thousands of suits to determine the possession of property, which would have dragged on in the courts until after the declaration of peace, and that the property determined by the Custodian to be enemy-owned would in the meantime have remained in the hands of the agents of the Germans.

After a careful consideration of the law the Bureau of Law reached the conclusion that the determination of the Custodian was final and must determine the possession of the property; that his act, being an exercise not of the municipal power but of the sovereign power to declare war and to seize and capture enemy property wherever found, was not subject to the due-process clause of the Federal Constitution, but even if it were subject to this clause of the Constitution, that the Trading with the Enemy Act by Section 9 provided a full, complete and adequate remedy for the enforcement of any rights which might be infringed; and that the Constitution does not guarantee that a particular remedy, but only that some remedy, will be afforded. Familiar decisions, somewhat analogous though relating to statutes enacted under the municipal power of Congress, are those which hold that statutes requiring payment of taxes in spite of a controversy and giving as a remedy merely a suit to recover back any taxes paid in error are due process of law and are not in violation of the Federal Constitution.

This interpretation of the power of the Custodian and finality of the Custodian's determination of enemy property was confirmed by a decision rendered by Judge Knox on December 16, 1918, in the District Court of the United States for the Southern District of New York, in the case

of the Salamandra Insurance Co. against New York Life Insurance & Trust Co.

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WHY MR. PALMER CONSIDERED HE HAD ARBITRARY POWER.

In accordance with this interpretation of Section 7 (c) of the act, a demand by the Custodian under the provisions of Section 7 (c) for the delivery to him of enemy property, following his determination that it is such, must be complied with unconditionally.

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Page 238:

WHO IS THE "OWNER?"

7. The word "owner" in the clause requiring the assent of the owner has been construed to mean the person determined by the Custodian to be the owner when the property was required to be transferred, and does not include the adverse claimants who may come forward claiming to be the true owners of the property.

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Page 239:

AMENDMENTS—WHY MR. PALMER SOUGHT ADDITIONAL POWER.

2. *Drafting amendments to the act.*—When the original Trading with the Enemy act was passed a full realization of the German industrial menace had not dawned upon the lawmaking body. The design of Germany in planting an industrial and commercial army upon American soil was only vaguely felt, and Congress followed the custom of other war-time legislation in making provision for the conservation and safe-keeping of enemy-

owned property in this country, without any attempt to employ the power of the Government as a war weapon to destroy the German hold upon American industry and commerce.

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Page 239:

By Section 12 the Alien Property Custodian was given the powers of a common-law trustee to manage and operate the property within his control, and to dispose of the same only if, and when, necessary to prevent waste and protect the property.

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HOW PALMER GOT POWER.

Mr. Palmer Admits that he Obtained this Additional Power to Sell by Resort to the Time-Honored Device of Having a Rider Affixed to a Pending Appropriation Bill.

“It was difficult to divert the attention of Congress from its many pressing war problems to what appeared to many to be a subordinate function of the general war-machine. The attempt to make the act as effective as experience proved it ought to be, finally resulted in three amendments to the law offered by the Alien Property Custodian, and adopted by resort to the time-honored device of having them carried as riders on appropriation bills. Little difficulty was encountered in impressing the committees of the Congress with the importance of these simple, but far-reaching, changes in the law.”—From an article written and signed by A. Mitchel Palmer, published in “Scribner’s Magazine” for July, 1919.

After a large bulk of this enemy property had come under one hand, and the Custodian was able to piece together the picture of Germany’s industrial aggression during the last 40 years, there came not only a fuller

realization of the hostile nature of Germany's industrial investment in America, but also of the powerful weapon against the foe which lay ready at our hands.

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The Congress then adopted the Americanization idea. On March 28, 1918, an amendment to Section 12 of the Trading with the Enemy act was passed, giving to the Alien Property Custodian the general power of sale, providing only that enemy property should be sold at public auction to American citizens.

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Page 240:

When the Custodian came to carrying out his selling programme, however, he met with two very serious obstacles. He found that some of the most important of the German-owned industries in this country were operating under patents issued by the United States Government to German subjects, which patents were being used and enjoyed by the American corporations owned by the enemy, and which had never been formally assigned and were still the property of the German subjects.

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Page 241:

The other obstacle which the Custodian encountered was the difficulty in making title to American purchasers of stock, because the certificates representing the enemy ownership were beyond his reach, being in the strong boxes of the owners in the enemy countries.

By an amendment to Section 7 (c) of the Trading with the Enemy act, contained in a deficiency appropriation act approved November 4, 1918, both these obstacles were removed.

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Page 242:

By this same amendment of November 4, 1918, the Alien Property Custodian was given authority to seize property so that the rights of the United States would not be defeated where for any reason the Custodian was unable to serve a demand.

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Page 242:

The sole relief and remedy of any person having any claim to any money or other property should be that provided by the terms of the act, and that in the event of sale or other disposition of such property the relief and remedy should be limited to an action against the net proceeds derived therefrom.

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Page 242:

Doubt existed as to whether the Custodian under the act as originally passed was endowed with power to pay State and municipal taxes rightfully upon the property in the hands of the Custodian and thereafter in the possession of the United States Government. Because of the obvious desirability of paying such taxes, this power was specifically given to the Custodian by the sundry civil appropriation bill approved July 1, 1918.

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Page 271:

LIQUIDATION OF INSURANCE PROPERTY.

The Treasury Department has ordered the liquidation of enemy fire and reinsurance companies, which liquidation is now proceeding under the supervision of the Alien Property Custodian. The

liquidation of German private property, particularly the German commercial enterprise, is being accomplished under the direction of the Alien Property Custodian, where such enterprises are conducted by partnerships of which an enemy as defined by the trading-with-the-enemy act is a member. The act of war having avoided such partnership agreements, the War Trade Board has issued licenses to partnerships to continue in business for the purpose of liquidating out the enemy interest under the supervision and control of the Alien Property Custodian. Where the enemy interest is in the shape of stock holdings in American corporations, the Alien Property Custodian is taking over the stock holdings and representing the stock is placing directors in the companies to supervise the management and operation of such companies. None of such corporations are being liquidated at the present time.

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POWER OF THE PRESIDENT.

Page 243:

(a) *Executive orders*.—By Section 5, Subsection (a), of the Trading with the Enemy act the President is given authority to “make such rules and regulations, not inconsistent with law, as may be necessary and proper to carry out the provisions of this act; and the president may exercise any power or authority conferred by this act through such officer or officers as he shall direct.”

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METHODS EMPLOYED BY MR. PALMER TO INCREASE HIS POWER AND AUTHORITY.

When Mr. Palmer received the enlarged and coveted

additional powers of Seizure and Sale, he proceeded to exercise it in the most drastic and violent manner; riding ruthlessly over the rights of private property and seemingly disregarding all treaty obligations. The moment he had succeeded in rounding out his scheme of forceful seizure and power of sale he foresaw the difficulty of maintaining the legality of his acts; and there is no doubt that at this time he conceived and he was the author of what is known as "Executive Order" of October 12th, 1917, which provides as follows:

"XXXII. I vest in the Attorney General all powers and authority conferred upon the President by the provision of Section 9 of the Trading with the Enemy Act."

He was shortly thereafter appointed Attorney General. It can be seen that this completed the vicious circle of one-man power and control, especially as he also prepared a list of persons whom he wished to be declared "enemies." This is made clear, as will appear by the annexed excerpts from Mr. Palmer's own "Report," wherein he gives the various executive orders and proclamations of the President, and he says they were arranged "to meet the exigencies of the situation by enlarging the classification of enemies," and where he also states it "vested in the Alien Property Custodian, generally speaking, all the powers of the President as regard the sequestration of enemy property in the United States." The fact that he personally and members of his immediate staff prepared, in the first instance, all of such Executive Orders of the President giving him authority in all cases is elsewhere printed in this volume.

The conditions arising from the above state of facts were undoubtedly in the mind of Senator Frelinghuysen when he exclaimed from his place in the Senate that it was outrageous to compel a man who complained that he

was wronged by the Alien Property Custodian's Office to appeal for relief as a final arbiter to the same individual as Attorney General of the United States, with all his powers of place and authority as a background, and especially when such complainant undoubtedly had been already over-awed and terrorized by the very individuals in the primary instance who worked with Mr. Palmer as their head in another Department. Perhaps this very complainant had been arrested, interned or made technical "enemy" by Mr. Palmer himself, so that his properties could be seized or possibly confiscated.

The nature of the Trading with the Enemy Act is shown conclusively in the expressed intention of its framers, from the moment of its introduction to its final passage, as read in the light of its expressed terms and the meaning of the legislators as shown by the debates in Congress and Committees.

The Act provides for a common law trusteeship, a retention of property by the United States as bailee, and it was at no time to be considered as confiscatory. It carried ample and many promises of the return of property after the end of the war. And no amendment can change the original nature of the Act.

To "confiscate" the Act should have been repealed and an act of confiscation enacted.

It has been contended that the amendment of March 28, 1918, giving the Custodian rights as though he were sole owner if construed literally was void and unconstitutional in that it changed the purport of the Act, which provided in all its terms for a trusteeship only.

MR. GARVAN SAYS CUSTODIAN WAS MERELY TRUSTEE.

On July 15, 1919, Mr. Francis P. Garvan, Alien Property Custodian, was under examination before the Committee

on Ways and Means, House of Representatives (see page 265, Dyestuff Hearings).

Mr. Moore: Now he obtained that legislation (Mr. Palmer) subsequently through the medium of riders to appropriation bills, did he not?

Mr. Garvan: The facts show, I know there was an amendment passed. What it was a rider to I am not familiar with, but I assume your statement is correct.

Mr. Moore: I asked the question for this reason: The assumption of Congress, when this bill was passed, was certainly that the Alien Property Custodian would be trustee for property seized?

Mr. Garvan: Yes.

Mr. Moore: And I think that originally there was no intent of Congress when this Trading with the Enemy Act was passed to provide the Alien Property Custodian with authority to sell property seized and then convert the proceeds without coming back to Congress.

Mr. Garvan: I think the first intent was only to sell to prevent waste and to protect the property.

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Mr. Moore: Under the original Trading with the Enemy Act he did not seem to have sufficient power. The present Alien Property Custodian has just stated that Mr. Palmer did not feel that he had sufficient power to sell.

Mr. Kitchin: But he did get it afterwards?

Mr. Moore: He did get that power by coming in at a time when all was excitement and secured what he wanted by the passage of riders to appropriation bills.

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THE CUSTODIAN PREPARED THE EXECUTIVE ORDERS FOR THE PRESIDENT.

Mr. Moore: However, after Mr. Palmer got this additional power he went to the President for additional

power. Can you tell me who prepared the orders signed by the President, relating to the Alien Property Custodian?

Mr. Garvan: Yes. I would say Mr. Palmer himself in consultation with Mr. Bradley Palmer of Boston, who was one of his advisers.

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Mr. Moore: You do not know whether Mr. Bradley Palmer prepared the executive order signed by Woodrow Wilson, February 26, 1918?

Mr. Garvan: No, but I would say it was prepared as the joint action of the three men.

HOW MR. PALMER'S POWERS GREW.

It is generally agreed that the original Trading with the Enemy Act was a wise and fair measure.

It has already been shown by the debates in Congress and reports of Committees that all amendments thereto which so radically changed the purview of this act so as to make its validity doubtful, were injected by Mr. Palmer's influence with his own party who were then in power and that he personally appeared before Committees and urged their adoption. All this was done during the period of war excitement and without proper committee consideration, and in every instance they were adopted as riders to appropriation acts which precluded a fair and proper vote on their merits on the floor of Congress—all of which is set forth in appropriate places in this volume.

EXTRACT FROM THE REPORT OF THE ATTORNEY GENERAL, 1919, PAGE 21.

OPINIONS.

On May 31, 1918, the President ordered that all law officers of the Government, excepting those in the Philip-

pine Islands, including all law officers attached to any executive bureau, agency or office specially created for the prosecution of the existing war, should exercise their functions under the supervision and control of the head of the Department of Justice, in like manner as the law had theretofore provided with respect to the solicitors for the principal executive departments and similar officers, and that any opinion or ruling by the Attorney General upon any question of law arising in any department, executive bureau, agency or office should be treated as binding upon all departments, bureaus, agencies or offices therewith concerned. This order gave the Attorney General authority to render opinions upon questions of law not only to the heads of the executive departments, but also to the heads of independent establishments.

During the fiscal year 1918, 54 opinions were rendered upon questions of law, 10 being upon requests of the President, 39 upon requests of heads of executive departments and 4 to independent establishments. In addition 2 are being held confidential upon the request of the head of the department or establishment to whom rendered.

EXTRACT FROM THE REPORT OF A. MITCHELL
PALMER, ATTORNEY GENERAL OF UNITED
STATES, 1920, PAGE 134.

“The Alien Property Custodian, being a trustee of the property under Section 12 of the Act, either for the enemy himself or such other beneficiaries as Congress may hereafter designate, is bound to exercise due diligence.”

FROM ALIEN PROPERTY CUSTODIAN'S REPORT,
PAGE 243.

Presidential Executive Orders and Proclamations.—

The Bureau of Law has been charged with the duty of

considering the necessity and advisability of Executive orders and proclamations, which have been drafted from time to time to confer the necessary authority upon the Custodian in the administration of the act and to meet the exigencies of the situation by enlarging the classification of enemies.

(a) *Executive Orders.*—By Section 5, Subsection (a), of the Trading with the Enemy Act the President is given authority to “make such rules and regulations, not inconsistent with law, as may be necessary and proper to carry out the provisions of this act; and the President may exercise any power or authority conferred by this act through such officer or officers as he shall direct.”

Under the authority conferred upon the President hereby by the President by Executive order, dated October 12, 1917, vested in the Alien Property Custodian, generally speaking, all his powers in regard to the sequestration of enemy property in the United States.

By an Executive order dated February 26, 1918, he prescribed certain rules and regulations in respect to the power and authority of the Custodian. Several other Executive orders have been issued by the President under the same authority, a list of which, including those of October 12, 1917, and February 26, 1918, follows:

Executive orders issued pursuant to the Trading with the Enemy Act:

October 12, 1917. Vesting power in designated officers.

October 29, 1917. Fixing salary of and vesting power in Alien Property Custodian.

December 7, 1917. Supplement to Executive order of October 12, 1917.

January 22, 1918. Allotment of appropriation for Alien Property Custodian, etc.

January 26, 1918. Rules and regulations under Section 5.

February 5, 1918. Revocation Paragraph XXX of Executive order October 12, 1917, and supplement order.

February 26, 1918. Prescribing rules and regulations *re* powers and authority of Alien Property Custodian.

April 2, 1918. Authorization of private sales.

April 11, 1918. Revocation of certain powers in designated officers.

April 24, 1918. Private sale of property of Paul Schmitz.

April 24. Private sale of property of Warneken & Sohn.

April 24, 1918. Private sale of property of W. F. Falenstein.

April 24, 1918. Private sale of property of Ad. Hagens & Co.

April 24, 1918. Private sale of property of Schilling & Burning.

May 7, 1918. Private sale of property of Schilling & Burning.

May 9, 1918. Private sale of property of Hammar & Co.

May 31, 1918. Placing all Government law offices under the supervision of the Attorney General.

June 15, 1918. Orenstein & Koppel-Arthur Koppel sale.

July 15, 1918. Authorization of private sale in lots not exceeding \$10,000.

July 16, 1918. Alien Property Custodian's powers of management, administration, sale, etc.

August 20, 1918. Amending Executive order, October 12, 1917.

August 29, 1918. Private sale of seats or memberships on stock, grain, etc., exchanges.

September 12, 1918. Sale of property of Lilly Busch.

September 13, 1918. Powers of managing director of Alien Property Custodian in Philippine Islands.

September 13, 1918. Cancelling sale of *Helios*.

September 13, 1918. Cancelling sale of *El Siglo*.

September 13, 1918. Cancelling sale of part of Germann & Co.

September 13, 1918. Cancelling sale of Froelich & Kuttner.

September 13, 1918. Cancelling sale of *La Sombrieria*.

September 30, 1918. Rejecting bid of Theodore Friedeburg for the property of the partnership of A. W. Faber.

November 12, 1918. Powers of Alien Property Custodian with regard to insurance companies.

December 3, 1918. Patents, trade-marks, prints, etc.

December 3, 1918. Delegation of powers of President in Frank L. Polk.

It will be noted that the Executive order dated December 3, 1918, vested in Frank L. Polk "all the power and authority conferred upon the President by the provisions of Section 12 of said Trading with the Enemy Act as amended," with certain exceptions therein stated. Mr. Polk under this delegation of power has issued the following orders, which, while not technically such, are substantially Executive orders for all purposes:

December 4, 1918. Order concerning the sale of the capital stock of the International Insurance Co. of New York.

January 11, 1919. Order concerning the sale, transfer, release and surrender of certain rights of H. E. Schniewind, a copartnership, and of the copartners thereof resident in Germany.

February 26, 1919. Order concerning the sale, transfer and release of certain rights under letters patent, trade-marks and similar rights determined to belong to or to be held for, by, on account of or on behalf of or for

the benefit of "enemies" not holding a license granted by the President.

(b) *Proclamations.* Section 2 of the Trading with the Enemy Act by Subdivision C thereof vests in the President, if he shall find the safety of the United States, or the successful prosecution of the war so require, power to include within the term "enemy" and "ally of enemy" as used in the Trading with the Enemy Act such other individuals and body or class of individuals as may be natives, citizens or subjects of any nation with which the United States is at war other than citizens of the United States wherever resident or wherever doing business.

Under this power the President by a proclamation of February 5, 1918, extended the term "enemy" to include natives, citizens or subjects of Germany or Austria-Hungary interned in the custody of the War Department for detention during the war under the provisions of Sections 4067, 4068, 4069 or 4070 of the Revised Statutes of the United States.

By a proclamation dated May 31, 1918, the President extended the word "enemy" to include other citizens and subjects of Germany and Austria-Hungary who though not included within the original classification of enemies made by the act, fall within the group of persons whose property in the United States is required by the safety of the United States and the successful prosecution of the war to be subject to the provisions of the trading-with-the-enemy act. The persons defined to be enemies by this proclamation are:

(1) Wives of officers, officials or agents of Germany or Austria-Hungary; wives of persons within the territory (including that occupied by military and naval forces) of Germany or Austria-Hungary; and wives of persons resi-

dent outside of the United States and doing business within enemy territory.

(2) Persons who are prisoners of war or who have been or shall hereafter be interned by any ally of the United States.

(3) Persons who since April 6, 1917, have disseminated or who shall hereafter disseminate propaganda calculated to aid any nation at war with the United States or to injure the cause of the United States, or who have assisted or who shall assist in plotting or intrigue against the United States or any of its allies.

(4) Persons included or who shall hereafter be included in the "Enemy-Trading List"; and

(5) Persons who at any time since August 4, 1914, have been resident within enemy territory.

Other proclamations have been issued from time to time extending the term "enemy" to include certain individuals who are citizens or subjects of Germany or Austria-Hungary.

MAGAZINE AND OTHER NEWSPAPER PROPAGANDA OF MR. PALMER.

"Enemy Property in the United States. By A. Mitchell Palmer, Attorney General of the United States, Formerly Alien Property Custodian." The above is the title of an article appearing in the Saturday Evening Post of July 12, 19 and 26, 1919, of which the following is an extract:

As its title implies, the law was designed to prohibit commerce between persons in the United States and those in enemy countries.

* * * * *

HOW THE ACT WAS CHANGED.

This act, in effect, originally made the Alien Property Custodian merely a benevolent conservator of the property of our enemies. He was not authorized to "seize," but he might "demand and receive" such property, and his duties were limited to the administration of the trusts thus coming into his hands. He was directed to act for the original owners as a sort of guardian of their interests and an official protector of their rights. Even his right to sell the assets of an enemy was limited to cases in which it was necessary to do so in order to prevent waste or protect the property, all of which obviously inured to the benefit of the enemy himself.

* * * * *

One of the first amendments to the act gave the Alien Property Custodian authority to make any proper disposition of property of enemies which might come into his possession. No sales, however, might be made except by public auction and to the highest responsible bidder, provided that bidder was an American citizen.

A second amendment was found necessary, by reason of an opinion of the Department of Justice given to the Federal Trade Commission, the burden of which was that under the Trading With the Enemy Act a patent was not such property as could be demanded and taken over in the administration of the law. Once more the Alien Property Custodian found his hands tied. He was unable to effect the seizure or the disposition of numberless patents owned by Germans which had been issued and were being protected by the American Government.

* * * * *

With the adoption of these amendments the execution of the Trading With the Enemy Act became a part of America's superb fighting machine. Not only did the Alien Property Custodian proceed against those industries

that had been built up in this country as a German military reserve, but he turned these very industries, where possible, into supports for the American Armies.

* * * * *

The policy of the Government in continuing these sales is based upon very much broader considerations than the technical right to take over the property as a result of a state of war. More than once I have referred to the importance and the necessity of securing independence of American industry by exiling the German investor from our shores.

* * * * *

Moreover, Germany has sequestered all the American property within her bounds and has, we know, liquidated or sold to German subjects. (*Saturday Evening Post*, July 12, 1919.)

* * * * *

"With the entrance of this country into the war and the passage of the Trading With the Enemy Act, German capital invested in the American fur trade became a subject of our investigations. We were determined that this influence should be eliminated and all traces of it wiped out. The result was easy of attainment in comparison with other problems which the Alien Property Custodian faced.

* * * * *

"The record of German-owned or controlled properties which were ferreted out and taken over might be multiplied indefinitely. Some were found in the most unexpected quarters. Some that were found stood out stubbornly against our authority until strong action was applied. But all that were unearthed were taken into our custody and as far as possible are being Americanized. Nor is it too much to say that long before the treaty of peace was laid before the enemy plenipotentiaries at Ver-

sailles the American Government had succeeded in forcing the unconditional surrender of the industrial enemy at home." (*Saturday Evening Post*, July 26, 1919.)

THE CHEMICAL INDUSTRY.

"In fact, all the broad powers conferred upon the Alien Property Custodian by the Trading with the Enemy Act had to be called into play; first to identify the German holdings, and next to root out the enemy control of so vital a domestic industry, preparatory to its complete Americanization." (*Saturday Evening Post*, July 19, 1919.)

THE VAST AMOUNT OF ENEMY PROPERTY IN THE UNITED STATES.

(*Munsey*, July, 1918.)

By A. MITCHELL PALMER,

Formerly Member of Congress from Pennsylvania,
Now Alien Property Custodian.

* * * * *

This whole article is about a rehash of his other newspaper stories.

MR. PALMER'S STATEMENT AS TO
GERMANY'S TREATMENT OF AMERICAN PROPERTY.

Page 268:

The question is repeatedly asked: What has Germany done with American property in the German Empire? It may be answered in a few words. She has done just as we have done, keeping constantly a little ahead of us and protesting that she has resorted to liquidation and sale only as a matter of reprisal. With this excuse, she liquidated or sold American property before the general power of sale was conferred on the Alien Property Custodian by act of Congress. She has sold the property of American and neutral residents in Germany, down to household goods and wearing apparel¹, which has never

¹NOTE BY THE EDITOR.—It is interesting to note that the above extract from Mr. Palmer's Official Report to his own government is dated February 22, 1919. He had knowledge that the statements therein contained were not true. Among others for the following reasons: Senator Underwood read into the Record from his place in the Senate on September 19, 1919, a statement from the German Government, dated July 26, 1919, as follows: "Mr. Palmer must have known, as it was frequently reported to America through neutral channels, that although the German Government allowed itself to resort to reciprocal measures, that in fact during the whole war no American private or company property was liquidated. The Imperial Government officially put this in conformity to the facts on gaining knowledge of the Palmer Report." The full report herein referred to will be found on another page of this volume. This is again referred to in the testimony of Assistant Solicitor of the State Department Hill on another page of this volume. Furthermore, as shown by testimony of Mr. Palmer himself before the Senate Committee on Appropriations and read into the Congressional Record of March 11, 1918, by Senator Martin on that day, he knew what Germany was doing in regard to American property in that country. His special counsel Bradley W. Palmer testifying before the Foreign Relations Committee of the Senate on July 31, 1919, said: "The German Government has published from time to time the announcement that the American properties are intact in Germany."

been done here; she has organized corporations, under official control, to purchase at ridiculous prices, syndicate and control all the plants in certain industries having French, British, and American interests, all before similar action was taken in the United States and allied countries. It has been a sort of "retaliation before the fact."

MEASURES AFFECTING AMERICAN PROPERTY WITHIN GERMAN JURISDICTION.

Page 268:

The above heading in Mr. Palmer's Report above referred to, is followed by the ten pages of matter consisting of extracts from the United States and German Government reports, which he had every reason to know was dead matter, so far as the actual existing conditions discussed under the above title is concerned. This is shown by his testimony before the Committee as read into the Congressional Record March 11, 1918, and will be found on page of this volume. The most charitable thing to say of it, is, it was of the character of the usual Palmer propaganda—characteristic of such propaganda, to the extent that it might have been true at some time, and had remote truth for a foundation.

It was evidently put in to confuse both Congress and the people, and thus raise a false issue.

The very best present existing evidence of this assertion, is the disclosure of the exact situation, as shown by the following articles and head lines of articles quoted from the leading New York Newspapers of January 27, 1921.

(From an Article by A. Mitchel Palmer, Written for and
Published by the Sunday Star, Washington, D. C.,
May 25, 1919.)

The importance and necessity of securing American industrial independence by legislation of this nature, which would result in dislodging within our gates the hostile Hun, whose methods have been such as to unsettle the peace of the world, cannot be overestimated. Besides that, Germany has sequestered all of the American property within its bounds, and has liquidated or sold to German subjects a considerable portion thereof. It is not conceivable that this property will ever be returned to its American owners in kind. Under the conditions now prevailing in what was once the German empire, American investors in Germany will neither expect nor desire to continue business where they left off when the war began.

STATE DEPARTMENT OFFICIALLY NOTIFIED THAT GERMANY
IS READY TO RETURN AMERICAN PROPERTY.

Testimony of Assistant Solicitor of Department of State.

Mr. Denison: Can you tell the committee what policy the Government of Germany, Austria and Hungary are following with our citizens in the same situation, if any?

Mr. Hill: The State Department received a telegram about three months ago, I think, from Germany, stating their purpose to release all property taken over, other than funds. In Austria they have not taken over property to any extent. We seem to have no trouble with Hungary. Germany is disposed to return all property other than funds. I have not heard of any case where they are not.

Mr. Denison: That information has been given to the Government officially?

Mr. Hill: Yes, sir; we got that direct from the foreign office, through our mission in Berlin, that they were willing to return all the American property other than funds.

* * * * *

Mr. Hill: I stated to the committee before you came in that the State Department had made an inquiry as to the present treatment of our property in Germany, and about three months ago got a report through the American commissioner in Berlin, who is unofficially in Germany, from the German custodian of enemy property that the German Government was prepared at this time to release all property taken over other than cash holdings, so it is possible he could get back the property other than such funds.

Note.—The above testimony was given before the Committee on Interstate and Foreign Commerce, House of Representatives, March 25, 1920. See Report on H. R. 14,208.

GERMANY DID NOT CONFISCATE OR SELL AMERICAN PROPERTY.
(*Extract from the Transatlantic Trade Journal,*
September, 1920.)

I assume that a copy of the American Alien Property Custodian Report is on file at the American Chamber of Commerce in Berlin. Will you please turn to page 268, chapter entitled, "Germany's Treatment of American Property"? It is difficult to conceive that this, Mr. Palmer's official report to the President, should contain false statements, but statements made in our offices by American commercial men just returned from Germany do not coincide with Mr. Palmer's report. Therefore, we appeal to your organization to ascertain the truth. (Above question by a correspondent.)

Answer—

(a) After the work of Mr. Palmer had begun, the Imperial Government passed a ruling whereby liquidation of American property was permitted as the American Government had already begun to liquidate and sell German property, but the German ruling was never put into operation. Germany merely regulated and administered American property. When the administration was removed on January 11, 1920, Americans were again in full possession of their property.

(b) American property in Germany was neither liquidated nor sold.

(c) So far as Americans are concerned not a single instance is known to the Association where the German authorities even attempted to sell household goods and wearing apparel belonging to our citizens, and as to neutrals, which were not included in our investigation, nothing is known here of such action.

Further information upon this subject will be found in the January issue, 1920. It is highly unfortunate that these false statements were embodied in an official report to the highest Executive of the United States. Had Mr. Palmer taken the trouble to verify them by communicating with the Spanish Ambassador in Berlin, then, and still, in charge of American interests in Germany, they would not have formed a part of his official report.

GERMANS SAY AMERICAN PROPERTY WAS PROTECTED.

A press interview with the German custodian of enemy property in Germany, Dr. Herman Nieders, privy councillor, brought out the statement that American property in Germany was respected during the war, and carefully

administered. A total of \$100,000,000 worth of American property in the form of personal effects, factories, works of art, etc., was taken over by the custodian. Operating charges and war taxes, as well as storage charges, are assessed against this property. It is claimed that if the terms of the peace treaty "permit" all this property will be restored to its American owners. Among the large American factories administered by the German government during the war was that of the National Cash Register Company. The government requisitioned many articles during the war, such as rubber, nickel, etc., and it is claimed that the payment for such material was made to the trustees of the property, to be paid over to the rightful owners after the peace treaty was signed.—"Office Appliances," March Number, 1919; published in Tribune Building, N. Y.

GERMANY RETURNS AMERICAN PROPERTY.

New York Herald of January 27th, 1921, published a dispatch from its correspondent in Berlin that all American property was returned and all war regulations aimed at belligerents including the United States had been annulled, thus unconditionally releasing all American property.

All American Property Is Released by Germany. (New York World, Jan. 28, 1921.)

GERMANY GUARDED OUR PROPERTIES.

Custodian Has Released Americans' Holdings. (New York Eve. Post, Jan. 27, 1921.)

GERMANY RELEASES AMERICAN PROPERTY.

No Liquidations Forced—Harvester Official Thanked Government. (New York Times, Jan. 28, 1921.)

SENATOR UNDERWOOD'S MISTAKE.

In view of the above uncontrovertible proof as to the attitude of Germany regarding American property it is hard to understand the purport of Senator Underwood's remarks on the floor of the Senate as late as January 29th, 1921 (see Congressional Record of that date) when speaking on Senator Knox's bill to restore certain seized property to American-born women, where he says:

Senator Underwood: I seriously object to the statement that we should return to German nationals property taken by the Alien Property Custodian during the war. That was an act of war. It was done by other governments, and the property of American citizens was ruthlessly destroyed, taken and confiscated during the war by the German government.

Certainly the Senator knew as long ago as September 19th, 1919, that his statement that "the property of American citizens was ruthlessly destroyed, taken and confiscated during the war by the German Government," was not correct, because, as appears in the Congressional Record of that date he personally inserted in the Record the Report of the Government official acting as Alien Property Custodian for that Government, which the Senator received through our own State Department, which clearly shows that "no American private or company property was ever liquidated." The whole report as introduced by Senator Underwood appears upon the Congressional Record as is printed elsewhere in this volume.

PALMER REVERSES HIMSELF.

INTERVIEW GIVEN BY HIM TO THE WORLD, SUNDAY,
APRIL 11, 1920.

The Attorney General in discussing this phase of the situation said:

CONGRESS RESERVES POWERS.

"Congress by the terms of the Trading With the Enemy Act has reserved to itself exclusively the right to make such ultimate disposition of all property taken and held by the Alien Property Custodian as it may determine. I am of the opinion that Congress will not deem it advisable either to confiscate the property belonging to the individual subjects of the enemy nation or to use such property in the payment of claims of our citizens against Germany and Austria if those nations will agree to indemnify all such claims.

"If such an agreement is made I think that all money and all property or the proceeds of the sale thereof should be immediately returned to the original owners. My opinion on this subject has undergone a change since I made my last annual report. I then expressed the fear that a return of property in kind to the former enemy owner, especially going businesses and manufacturing concerns, would in effect be confiscatory and would cause a distinct depreciation and loss to the former owner owing to the bitter resentment naturally following the war.

"During the past year, however, practically all enemy interests in such businesses and concerns had been sold—hence, generally speaking, all the property that would be returned in kind would be such as is owned by the individual enemy subject as realty, bonds, stocks, etc., which are not subject to the objection then referred to.

"I further believe that the present unrest and disintegration of economic conditions would be materially ameliorated if, instead of using the money and property of individual enemy subjects to pay the claims of American citizens, we could effect a separate agreement with the enemy nation providing for the payment of a lump sum in settlement of all such claims. This would enable the

immediate release of the property held by the Custodian to its former owners and thus aid them materially in re-establishing themselves in business. I think this manner of handling the problem would insure a more expeditious and less confusing solution of the difficulties involved."

The Attorney General pointed out that the present situation is not unlike that that confronted Congress after the Revolutionary War with Great Britain. During that war, although Congress had not passed any acts of confiscation of sequestration, several of the individual States did so, and in the negotiations for peace it was necessary to adjust the interests which British subjects had in property and debts taken over under State legislation.

Despite the fact our representatives did not think at that time (the Constitution having then to be adopted) that Congress had the power to return to British subjects property belonging to them but held by the different States, a treaty was concluded in 1782 by the terms of which it was this treaty was concluded many British subjects found the terms unavailing in the State courts, and for this reason, as also to provide for the future, a clause was inserted in the Constitution declaring that the treaties then made or thereafter made should be the supreme law of the land.

Many of the cases growing out of the Revolutionary War engaged the attention of the American courts for many years to come. During the war with Great Britain in 1812 Congress did not pass any confiscatory acts as to enemy private property on land, though provision was made for seizure of marine property.

THREE ACTS DURING CIVIL WAR.

During the Civil War three acts were passed relative to private property belonging to the citizens of insurrectionary States and seized by the Federal Government.

The first provided solely for the seizure and condemnation of such property; the second for confiscation of certain property of this character; the third for the sale of property captured or abandoned, the owners of which were given the right to make claim for the proceeds in the court of claims.

The Hague convention of 1899 to which the United States was a party provided against the confiscation of private property situated in hostile territory, which policy is not directly applicable to the confiscation of enemy private property within the United States.

The United States has entered into several treaties providing against the sequestration or confiscation of debts due from individuals of the belligerent nations respectively and shares and money which they may have in public funds and private banks.

After the declaration of war with Germany in April, 1917, Congress considered the framing of the Trading With the Enemy Act. In urging the acceptance of this measure, which had been framed by the Foreign Department of the Government and the Attorney General, Secretary Lansing testified that the act was not one of confiscation and would in reality prove a protection to the property belonging to enemy subjects, both from what might be considered unjust action of the Government and from the liability of violence during the passions of war.

Secretary of Commerce Redfield also testified that the act was the direct opposite of confiscation or requisition and that all property would be safely held until after the war, when the possession of it would be a decided value in the negotiation of peace.

EFFECT OF THE VALIDATION CLAUSE IN THE VERSAILLES PEACE TREATY ON ALIEN ENEMY PROPERTY RIGHTS IN THIS COUNTRY.

HEARING BEFORE SENATE FOREIGN RELATIONS COMMITTEE,
JULY 31, 1919.

Hearings were being held by the Senate Committee on Foreign Relations upon the Versailles Treaty and Mr. A. Bradley Palmer, one of the attorneys for the Alien Property Custodian, was testifying before the committee in respect of the provisions of the treaty, and especially those which undertook to validate all of the acts done in relation to the seizure, administration and sale of enemy-owned property. Mr. A. Bradley Palmer was one of the advisors at Versailles of the American representatives upon the provisions of the treaty relating to enemy-owned property. The following is taken from the report of the hearings before the Senate Committee:

* * * * *

Mr. Baruch: That property is left in the hands of Congress, to do with it as it wishes.

Senator Swanson: Under this treaty?

Mr. Baruch: Absolutely.

Senator Swanson: Then the treaty does not make any disposition of that property, I understand.

Mr. Baruch: No, sir. It leaves it in the hands of Congress to dispose of. But, in addition, under that treaty it has been given additional rights of use. It can be held as a set-off against American property in Germany. It can be used for the payment of prewar claims like the "*Lucitania*," and other prewar claims.

* * * * *

Senator Knox: Mr. Palmer, can you tell us why all the acts of the Alien Property Custodian are validated, thus cutting off access to the courts as to the regularity of the proceedings, or the sufficiency of the amounts realized from the sale of property?

Mr. Palmer: Yes, Mr. Senator. This was a treaty between the United States and Germany, and it never seemed to anybody that the action of the United States in fighting the war against Germany should be open to criticism or upsetting by Germany.

Page 19.

Senator Knox: Suppose it could be demonstrated—I am only using this as an illustration, and I am sure there are no cases that are at all like it, but suppose it could be demonstrated—that property fairly worth \$5,000,000 had been disposed of by the Alien Property Custodian in a secret way for \$1,000,000. Why should a transaction of that kind be validated?

Mr. Palmer: Mr. Senator, I am sure that such a possibility as that does not exist.

Senator Knox: I agree to that. I simply am using that as an illustration.

Mr. Palmer: But if that situation did exist, I would say it was something for our Government to handle, and that it should not be open to the enemy.

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Page 19.

Senator Knox: Tell us what the owner of that \$5,000,000 property would do under the circumstances indicated in my question. What are his rights?

Mr. Palmer: If he is an enemy, it is pretty hard to think that he has any right, except to apply through diplomatic channels.

Senator Knox: Of course he has rights. If he is an alien enemy he has rights. Private property is to be protected. That is a rule of international law that there has not been any doubt about for a hundred years.

Senator Fall: This whole treaty is providing for the regulation of these very rights.

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Page 19.

Senator Knox: I want to know what rights the man in Germany has who owned \$5,000,000 of property in the United States, that was either secretly or fraudulently or otherwise disposed of for \$1,000,000. What rights has he, if any?

Mr. Palmer: He has the right to come to Congress for his claim, as the trading with the enemy act provides. Mr. Senator, let me answer your question in this way, in order that you can see how the legal process has shaped itself in our minds. The trading with the enemy act authorized the Alien Property Custodian to take enemy property in this country. Through the original act and the amendment thereto the title to the property was vested in the custodian, so that he was given all the rights of the absolute owner, to quote the language of the amendment.

Senator Fall: He was a common-law trustee, was he not?

Mr. Palmer: Yes, under the original act; but the subsequent amendment went further than that and vested in him the rights of an absolute owner.¹ Further than that, he was given the authority to dispose of the property in certain ways. Now, I have always thought, and I think

¹See excerpts from briefs filed with Senate Judiciary Sub-committee by Attorneys Merton E. Lewis and Harold Remington elsewhere in this volume.

it is perfectly correct, that the title of the alien enemy had passed out of him, had become vested in the United States or in the Alien Property Custodian, an officer of the Government. The title has passed from the enemy.

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Page 20.

Senator Knox: In response to Mr. Palmer's statement that the alien enemy had no rights I replied that under international law private property of the alien was always protected until after the hostilities ceased, and then an accounting was made for it. That is a rule of international law and has been for a hundred years. What I want to get at, if you will permit me, is whether it would not have been entirely feasible to have inserted in this treaty a provision that the courts of justice of the United States should be open to the alien enemy after the war is over in order to challenge, not the title that passed to the Alien Property Custodian but the methods by which he disposed of it, if the claimant could make out a case of fraud or such gross negligence as to involve him in a serious loss, instead of passing him over to the ranks of the Revolutionary and Mexican War claims, with a technical claim against the United States, which he could only work out through Congress and the Committees on Claims. I asked the question whether it would not have been entirely feasible to open the courts of justice to him.

Mr. Palmer: The feasibility of such a system as that, with many other considerations, came up to me, and I decided it, and I am glad to explain the reasons why I decided against a clause of that sort. I should have thought and I do think that a clause of that kind would be contrary to the act of Congress under which we were acting.

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Page 21.

The next paragraph provides:

The proceeds of the property, rights and interests, and the cash assets, of the nationals of allied or associated powers held by Germany shall be paid immediately to the person entitled thereto or to his government; the proceeds of the property, rights and interests, and the cash assets of German nationals received by an allied or associated power shall be subject to disposal by such power in accordance with its laws and regulations.

Say, for instance, that we dispose of property here and we have assets of \$400,000,000 derived from the sale of property by the Alien Property Custodian, and in Germany assets of \$300,000,000. That leaves an excess of \$100,000,000. Now, as I understand you, your claim is that under that clause that excess of \$100,000,000 may be by Congress applied to the payment of the debts of American nationals who cannot otherwise collect their debts in Germany. Is that it?

Mr. Palmer: Yes.

Page 24.

Senator Fall: Then, undoubtedly, the people of the United States are very materially interested in seeing that the alien property brings just as much as it possibly can bring in the market upon its disposition by the Alien Property Custodian. Otherwise, there would be no excess which might be applied as payment of the debts of our nationals. Now, take the Bosch Magneto case, for instance, that you know about, of course, as you are attorney for the Alien Property Custodian. There is a very serious controversy about that case. The entire property was disposed of for something like \$4,000,000, and it is

claimed by the owner and others that the cash assets would make the value of the property at the time it was disposed of—it was disposed of after the armistice, I think—\$6,000,000. I will call it that in round numbers. It is claimed by some of the accountants that its value might be very much more than that. That matter is now in controversy, through some sort of court proceedings. At any rate it has been before a committee of the Senate upon several different occasions and was discussed at great length. Now grant, for the sake of argument, that there was a discrepancy of \$2,000,000; that amount might very well have gone to the nationals for the payment of their debts.

Mr. Palmer: Surely it is a matter of interest between the Government and the Alien Property Custodian.

* * * * *

Page 24.

Senator Fall: The Congress of the United States is the only tribunal to which they can come. Suppose it is shown clearly to the Congress of the United States that here is an American citizen who has a \$2,000,000 claim which he cannot collect against Germany and which Germany does not guarantee; if there are funds in the hands of the Alien Property Custodian, Congress can say to the Property Custodian, or to some other official, "Pay this man so as to discharge his claim." If there is no such excess, how is he going about it to get his claim paid? Would he have to come to Congress for an appropriation of \$2,000,000 out of the Treasury? You cannot set aside a sale that has been made by the Alien Property Custodian. This validates the sale.

Mr. Palmer: This validates it.

Senator Fall: But suppose it does not. He cannot set it aside.

Mr. Palmer: In case of a fraud, any fraudulent transaction is void.

Senator Fall: What proceedings would you take?

Mr. Palmer: In the case of a question of the character you raise, those are matters between the United States Government and its officers.

* * * * *

Mr. Palmer: Well, I am not prepared to answer that question, because it would depend on the character of the act, in what part of the country and under what State government it was passed, and a whole lot of things.

* * * * *

The Chairman: Mr. Palmer, do I understand you to say that this treaty does not validate the acts of the Alien Property Custodian so as to put him entirely beyond the rights of the courts so far as enemy aliens are concerned?

Mr. Palmer: Oh, no; I said that this treaty does validate the act so far as the enemy is concerned.

The Chairman. That is, no enemy alien can bring suit in any way.

Mr. Palmer: No.

The Chairman: Exactly. That is what I supposed.

* * * * *

Further on, on page 28 of the printed minutes of the hearing, Senator Fall raised the question as to whether an American citizen who was a minority holder of stock in one of the sold enemy properties might have any right other than a proportionate share of the price realized at the Custodian's sale, and Mr. Palmer again said that if fraud was apparent or there was an inadequate price realized it would be a "question of procedure, a question of corporation law of the State and of various details," and Senator Fall then asked what would happen if the American citizen did not act in time under

Section 9, and Mr. Palmer said, "His right to set the sale aside had not been changed in any way."

Senator Fall: But if the sale is made, you do not think that any individual can set it aside?

Mr. Palmer: I know they could if they have the proper cause.

Senator Johnson then took up the various validation clauses of the Treaty, and with the view of giving point to their discussion I will here annex part of a brief by ex-Attorney-General Lewis heretofore submitted to a sub-committee of the United States Senate.

ATTORNEY-GENERAL LEWIS ANALYZES EFFORTS OF MR. PALMER TO PROTECT HIMSELF AGAINST THE CONSEQUENCES OF ILLEGAL ACTS BY RECOURSE TO THE VERSAILLES TREATY.

"By resort to the time-honored device of having them (amendments to the Trading with the Enemy Act) carried as riders on appropriation bills." General Palmer was able, he tells us in his article published in Scribner's Magazine for July, to "put teeth into the law." The result was, as he says, that "we had on what might be called the American front, a commercial offensive of wide scope and far-reaching character." Thereafter and as a result thereof he became apparently the lightning change artist, the Dr. Jekyll and Mr. Hyde of the situation. At one moment he was the commander-in-chief of the American front, with an army of well-drilled and well compensated legal advisers, aids and assistants, engaged in conducting "the counter-offensive which finally drove the German Empire to surrender," as he himself modestly says in his Scribner's article. I assume, of course, that he wrote this himself.

The next moment he was the common-law trustee, ap-

pointed by the President under the provisions of the Trading with the Enemy Act, to manage the property that might be conveyed, transferred, assigned, delivered, or paid over to him, under the supervision and direction of the President and "under such rules and regulations as the President shall prescribe."

Before the adoption of these amendments General Palmer says that he was a "mere conservator of enemy property." He forgets that after the amendments, he was still a common-law trustee, by the specific language of the statute under which his appointment was made, and that he continued to be a common-law trustee until he resigned to accept the office of Attorney-General.

It was under the provisions of one of these amendments that General Palmer was able to transfer to the American Bosch Magneto Company¹ the "considerable number" of patents which he says (page 111 of his report), covered "every conceivable phase of invention and improvement in the art" (of manufacturing magnetos), "and which embodied the ideas of the best and most experienced German engineers in this branch of electrical science."

By their seizure and sale, he says, "in conjunction with the producing units—the factories—the American purchasers and the industry generally are insured against German competition within the field covered by the patents."

These patents, it should be remembered, are the patents concerning which General Palmer in his testimony said (page 167) that "if put on the books of the Bosch Magneto Company at a dollar, it was an over appraisalment,

¹The property was actually sold to Mr. Palmer's friend and business associate Martin E. Kern through a dummy purchaser named Griffith.
—Editor.

because the Bosch Magneto Company did not own one of them, and we said so in perfectly plain English in the prospectus itself."

They were sold, he says in his report, in conjunction with the producing units. They were important to and used with the business. He was able to dispose of them by reason of the amendments which were adopted by resort to the "time-honored device" of having them carried as riders on appropriation bills.

Probably the best and most convincing evidence of inadequacy of a consideration, the bid price for which the property was struck off, is found in the fact that the capital stock of the new company sold last week on the New York Stock Exchange at upwards of \$121 per share. The newspapers from day to day have carried items as to the present earnings of the company. In the New York Sun last week was a statement that the stock is actually earning twenty dollars per share. This is equivalent to an annual return of twelve hundred thousand dollars, on sixty thousand shares of stock. If each share of stock actually represents an investment of \$65 in cash, the total investment is the sum of \$3,900,000. One million, two hundred thousand dollars of earnings would permit the payment of dividends of more than thirty per cent. per annum in the stock. The Wall Street Journal of July 9 carried the statement that the earnings were nearly \$17 per share. This would mean that the company is earning approximately a million dollars a year net and would permit dividends of twenty-five per cent. per annum. The Financial Age of July 5th had an item announcing that the company "is said to have received recently an order for the delivery of 200,000 magnetos within thirty days."

Had the property sold for even seven and a half million dollars, one million two hundred thousand dollars would be equivalent to a dividend of sixteen per cent. Such a

dividend ought to satisfy even the most greedy investor. From whatever angle the subject is approached, the conclusion is inevitable that the property was sold for little if any more than one-half its true value.

This result was the natural outcome of the under-valuation of its assets, and the harsh and unusual terms and conditions of sale imposed by the Alien Property Custodian. It was to have been expected, and probably was expected. It was the result, not alone of putting teeth into the law, but the result of putting the administration of the law into the hands of men who thought it safe to disregard in their dealings with so-called enemy property not only the ordinary rules of fair dealing among business men generally, but also the express and specific provisions of the law itself.

The time has come for plain speech. It may not be pleasant, but the consequences of neglect of duty are quite likely to be unpleasant. The Bosch Magneto Company, with its capacity to earn a million dollars a year net, is in the hands of Mr. Palmer's friends. I suppose that he expects and that they expect that it will remain there. I do not know that a situation such as this was contemplated when Congress passed the Trading with the Enemy Act. I do not know whether it was intended to guard against such a situation. I can only call attention to the provisions of the law; they speak for themselves: No attempt to construe or define them is necessary.

Subdivision (e), Section 7, reads as follows:

"No person shall be held liable in any court for or in respect to anything done or omitted in pursuance of any order, rule, or regulation made by the President under the authority of this Act."

I quote also from one of the concluding paragraphs of Subdivision (b), Section 7:

"Nothing in this Act shall be deemed to authorize the prosecution of any suit or action at law or in equity in any court within the United States by an enemy or ally of enemy prior to the end of the war, except as provided in section ten hereof."

Under the provisions of Subdivision (g), Section 10:

"Any enemy, or ally of enemy, may institute and prosecute suits in equity against any person other than a licensee under this Act to enjoin infringement of letters patent, trade-mark, print, label, and copyrights in the United States owned or controlled by said enemy or ally of enemy, in the same manner and to the extent that he would be entitled so to do if the United States was not at war: Provided, That no final judgment or decree shall be entered in favor of such enemy or ally of enemy by any court except after thirty days' notice to the alien property custodian. Such notice shall be in writing and shall be served in the same manner as civil process of Federal courts."

The provision of Section 12 of the Act reads as follows:

"After the end of the war any claim of an enemy or an ally of enemy to any money or other property received and held by the alien property custodian or deposited in the United States Treasury, shall be settled as Congress shall direct."

These provisions of the original act seem reasonable and proper. In the amendment to the act which became a law by the approval of the President on November 4, 1918, however, we find this language which seems intended to take the place of the provisions which have been quoted:

"The sole relief and remedy of any person hav-

ing any claim to any money or other property heretofore or hereafter conveyed, transferred, assigned, delivered, or paid over to the Alien Property Custodian, or required so to be, or seized by him shall be that provided by the terms of this Act, and in the event of sale or other disposition of such property by the Alien Property Custodian, shall be limited to and enforced against the net proceeds received therefrom and held by the Alien Property Custodian or by the Treasurer of the United States."

Does the subject need any further elaboration or explanation? Boiled down, this is the situation as it exists: The property of the Bosch Magneto Company has been "administered" by the Alien Property Custodian. As a result, its owners have been deprived of ten million dollars' worth of assets. Those assets are now in the hands of the men who were appointed by General Palmer while serving as Alien Property Custodian. The old company has been dissolved; a new corporation has been formed; the stock of the new company is found to be exceedingly valuable, and the new company is earning dividends at the rate of from \$15 to \$20 a share thereon. In the Treasury, or under the control of the Custodian, there are \$4,150,000 of the proceeds of the sale of the old company, and the owners of the old company find themselves restricted to recover only the net proceeds of the sale as their compensation for being deprived of property which, prior to its seizure by the Custodian, was earning approximately a million dollars a year for its stockholders.

From the foregoing, it would appear of a truth that not all of the Huns are in Germany.

The New York Evening Sun of March 7 carried as a Washington dispatch the following:

"Washington, March 7.—Bradley W. Palmer, as-

sociate general counsel of the Alien Property Custodian's office, will sail for France Saturday to act as adviser to the American Peace Mission in all matters affecting the final disposition of enemy property."

Mr. Francis P. Garvan, testifying before a Congressional committee on July 15th, said in response to a question of the Chairman of that Committee, Mr. J. Hampton Moore (speaking of Mr. Bradley W. Palmer), "he is now at the Peace Conference as one of the advisers there." This testimony is found in the report of the hearings before the Committee on Ways and Means at page 260 of Part 3.

I now quote from the Peace Treaty:

"DEBTS.

"ARTICLE 296.

"There shall be settled through the intervention of clearing offices to be established by each of the High Contracting Parties within three months of the notification referred to in Paragraph (e) hereafter the following classes of pecuniary obligations:"

Paragraph 4 reads in part as follows:

"The proceeds of liquidation of enemy property rights, and interests mentioned in Section IV and in the Annex thereto will be accounted for through the Clearing offices, in the currency and at the rate of exchange hereinafter provided in Paragraph (d), and disposed of by them under the conditions provided by the said Section and Annex."

"SECTION IV.**"PROPERTY, RIGHTS AND INTERESTS.****"ARTICLE 297.**

"The question of private property, rights and interests in an enemy country shall be settled according to the principles laid down in this Section and of the provisions of the Annex hereto.

"(b) Subject to any contrary stipulations which may be provided for in the present Treaty, the Allied and Associated Powers reserve the right to retain and liquidate all property, rights and interests belonging at the date of the coming into force of the present Treaty to German nationals, or companies controlled by them, within their territories, colonies, possessions and protectorates, including territories ceded to them by the present Treaty.

"The liquidation shall be carried out in accordance with the laws of the Allied or Associated State concerned, and the German owner shall not be able to dispose of such property, rights or interests nor to subject them to any charge without the consent of that State.

"(c) The price or amount of compensation in respect of the exercise of the right referred to in the preceding paragraph (b) will be fixed in accordance with the methods of sale or valuation adopted by the laws of the country in which the property has been retained or liquidated.

"(d) As between the Allied and Associated Powers or their nationals on the one hand and Germany or her nationals on the other hand, all the exceptional war measures, or measures of transfer,

or acts done or to be done in execution of such measures as defined in Paragraphs 1 and 3 of the Annex hereto shall be considered as final and binding upon all persons except as regards the reservations laid down in the present Treaty.

“(i) Germany undertakes to compensate her nationals in respect of the sale or retention of their property, rights or interests in Allied or Associated States.”

In the Annex to Article 297, Paragraph 1, we find the following:

“In accordance with the provisions of Article 297, paragraph (d), the validity of vesting orders and of orders for the winding up of business or companies, and of any other orders, directions, decisions or instructions of any court or any department of the Government of any of the High Contracting Parties made or given, or purporting to be made or given, in pursuance of war legislation with regard to enemy property, rights and interests is confirmed. The interests of all persons shall be regarded as having been effectively dealt with by any order, direction, decision or instruction dealing with property in which they may be interested, whether or not such interests are specifically mentioned in the order, direction, decision, or instruction. No question shall be raised as to the regularity of a transfer of any property, rights, or interests dealt with in pursuance of any such order, direction, decision or instruction. Every action taken with regard to any property, business, or company, whether as regards its investigation, sequestration, compulsory administration, use, requisition, supervision or winding up, the sale or management of property,

rights or interests, the collection or discharge of debts, the payment of costs, charges or expenses, or any other matter whatsoever, in pursuance of orders, directions, decisions, or instructions of any court or of any department of the Government of any of the High Contracting Parties, made or given, or purporting to be made or given, in pursuance of war legislation with regard to enemy property, rights or interests, is confirmed.

“2.

“No claim or action shall be made or brought against any Allied or Associated Power or against any person acting on behalf of or under the direction of any legal authority or Department of the Government of such a Power by Germany or by any German national wherever resident in respect of any act or omission with regard to his property, rights or interests during the war or in preparation for the war. Similarly no claim or action shall be made or brought against any person in respect of any act or omission under or in accordance with the exceptional war measures, laws or regulations of any Allied or Associated Power.

“3.

“In Article 297 and this Annex the expression ‘exceptional war measures’ includes measures of all kinds, legislative, administrative, judicial or others, that have been taken or will be taken hereafter with regard to enemy property, and which have had or will have the effect of removing from the proprietors the power of disposition over their property, though without affecting the ownership, such as measures of supervision, of compulsory ad-

ministration, and of sequestration; or measures which have had or will have as an object the seizure of, the use of, or the interference with enemy assets, for whatsoever motive, under whatsoever form or in whatsoever place. Acts in the execution of these measures include all detentions, instructions, orders or decrees of Government departments or courts applying these measures to enemy property, as well as acts performed by any person connected with the administration or the supervision of enemy property, such as the payment of debts, the collecting of credits, the payment of any costs, charges or expenses, or the collecting of fees.

“Measures of transfer are those which have affected or will affect the ownership of enemy property by transferring it in whole or in part to a person other than the enemy owner, and without his consent, such as measures directing the sale, liquidation, or devolution of ownership in enemy property, or the cancelling of titles or securities.”

Paragraph (a) of Article 296 reads as follows:

“Each of the High Contracting Parties shall prohibit, as from the coming into force of the present Treaty, both the payment and the acceptance of payment of such debts, and also all communications between the interested parties with regard to the settlement of the said debts otherwise than through the Clearing Offices.”

In the Annex, Paragraph 3, we find the following:

“The High Contracting Parties will subject contraventions of paragraph (a) of Article 296 to the same penalties as are at present provided by their legislation for trading with the enemy. They will

similarly prohibit within their territory all legal process relating to payment of enemy debts, except in accordance with the provisions of this Annex."

Under Paragraph 5, of the Annex, we find the following:

"The High Contracting Parties will take all suitable measures to trace and punish collusion between enemy creditors and debtors. The Clearing Offices will communicate to one another any evidence and information which might help the discovery and punishment of such collusion."

The provisions of the treaty above quoted are intended to have one effect, and one only, the nullification of the right granted by the Trading with the Enemy Act to try out in the courts of this country the questions arising out of the seizure, sale and dissolution of enemy property and enemy corporations. Briefly, they will prevent, and are intended to prevent, any judicial review of any act of the Alien Property Custodian. The approval of these provisions of the treaty by the Senate of the United States and the acceptance by this Government of the provisions of that article and the Annex thereto will effectually confirm in the possession of the individuals now in control of the Bosch Magneto Company's property the right to continue in control, to continue in the operation of the property, and to continue in the enjoyment of the enormous profits which that property is capable of earning, and which, on the evidence submitted, it appears such owners are now enjoying. The confirmation of this treaty by the Senate of the United States will amount to a ratification and approval by the Alien Property Custodian of every act which he has performed. It will amount to the approval of the extortionate methods by which this stock

of the Bosch Magneto Company was acquired by the Alien Property Custodian. It will amount to an approval of the fraudulent under-valuation of the assets of that company in the balance sheet prepared by J. A. MacMartin, one of the subordinates of the Alien Property Custodian. It will amount to the approval of the violation of the rules of the Alien Property Custodian prohibiting his subordinates from becoming interested in the conduct of any business taken over and administered by the Alien Property Custodian, and it will confirm in the present owners of the stock of the new company the right to continue for all time in the receipt and possession of the enormous dividends which this company has shown its ability to earn and distribute among its stockholders.

TRADING WITH THE ENEMY.

*United States Senate—Report of Committee on Commerce,
No. 113, Accompanying H. R. 4960.*

The above is a most valuable document, containing as it does not only an elaborate discussion of the proposed bill as well as a verbatim copy of the House Report from the Committee on Interstate and Foreign Commerce, but also a memorandum of American and English cases on the subject up to the time of the hearing. Inasmuch as Mr. Palmer in his report to Congress (Senate Document 435, 65th Session) and in his many magazine and other news articles has repeatedly referred to the fact that "the original Trading With the Enemy Act was a rather innocuous piece of legislation" (Scribner's for July, 1919), and that there was "little accurate or definite knowledge as to the extent of the German investment in the United States" (Alien Property Custodian's Report, by A. Mitchel Palmer, 1919, page 14), the following item from the open-

ing paragraph of the Senate committee report is interesting:

“Your committee devoted more than a month to careful, painstaking consideration of this bill. It spent several days in giving hearings to various interested parties, and to representatives of several departments of the Government. These hearings cover more than two hundred printed pages.”

In the third paragraph of the report the committee says:

“The purpose of this bill is to mitigate the rules of law which prohibit all intercourse between the citizens of warring nations, and to permit, under careful safeguards and restrictions, certain kinds of business to be carried on. It also provides for the care and administration of the property rights of enemies and their allies in this country pending the war. The spirit of the act is to permit such business intercourse as may be beneficial to citizens of this country, under rules and regulations of the President, which will prevent our enemies and their allies from receiving any benefit therefrom until after the war closes, leaving to the courts and to future action of Congress the adjustment of rights and claims arising from such transactions. Under the old rule warring nations did not respect the property rights of their enemies, but a more enlightened opinion prevails at the present time, and it is now thought to be entirely proper to use the property of enemies without confiscating it; also to allow such business as fire insurance, issuance and use of patents, etc., to be carried on with our enemies and their allies, provided that none of the profits arising therefrom shall be sent out of

this country until the war ends. The general principles governing the bill are so well stated by Assistant Attorney General Warren, of the Department of Justice (see hearing pp. 130 and 131), that we quote from him as follows:"

Here follows an exhaustive examination of the authorities up to that date which it is not considered germane to the subject matter of this publication to include under this heading, but they will be found at the end of this volume.

AMENDMENTS TO TRADING WITH ENEMY ACT.

March 28, 1918.

(*Congressional Record*, March 11, 1918.)

Discussion in Senate (pp. 3586 *et seq.*)

These amendments changed Section 12 of the above act, in many ways; among others, it gave the right to the Alien Property Custodian to sell seized properties. They were introduced by Senator Martin of Virginia as an amendment to the Urgency Appropriation Bill.

* * * * *

"Mr. Gallinger: Mr. President it is proper the Record should show that while this amendment is reported by the Committee, it is not a unanimous report of the Committee. There was some of us who did not agree to it."

* * * * *

"Mr. Dillingham: I will ask the Chairman of the Committee to tell us how this amendment changes the present law?"

"Mr. Martin: Mr. President, under the present law the Custodian of Alien Enemy Property takes such property

into custody, but he has no authority to sell it. The Custodian of Alien Enemy Property appeared before the Committee, as the Senator from Vermont no doubt will recall, and stated that he was now conducting business—a very large business—in our country and in our island possessions and making enormous profits, and he thought he ought not to be conducting, and the United States ought not to require him to conduct, this large business for the profit, possibly, of our enemies—the German Empire. I will read briefly what Mr. Palmer said:

* * * * *

“‘I am to-day operating factories and mills and industries all over the United States. Through my directors representing the enemy stock, I am making chocolate in Connecticut, rails in Pennsylvania, woolens and worsteds in New Jersey, dyes and chemicals in New York, lumber in Florida, raising sugar in Porto Rico and Hawaii, raising tobacco in many States in the South, making beer in Chicago, lead pencils in New Jersey, and conducting all these various kinds of business and many others, most of which are making enormous profits, by reason of the very conditions for which the enemy is responsible, namely, the war conditions. If I must simply sit here, holding the stock of these companies making these enormous profits out of the war, with the possibility of returning both principal and profit to the German owners at the end of the war, I am doing a tremendous favor to the German Empire, our enemy.’

“Senator Gallinger: What would be the alternative, Mr. Palmer?

“Mr. Palmer: The alternative would be to account for these properties as of their value at the time I took them over, etc. * * * sell them to

American capital, let Americans run them, separate them permanently from German control * * * when the war is over * * * say to them, 'Here is the value of your property when the war broke out, in the Treasury of the United States in cash.'

"Senator Dillingham: Has the German Government any interest in the various industries which you have mentioned?

"Mr. Palmer: We have not gotten to the bottom of that, Senator. We run into things that make us think that the German Government has.

Upon further discussion Mr. Dillingham said:

"Mr. Dillingham: And it is a remarkable fact, Mr. President, that Mr. Palmer—who came before that committee on purpose to tell us why that amendment should be adopted—failed, after speaking an hour, to give the only reason that has been urged, the one just given by the Senator from Virginia," and reading further on from the report of the Committee, Senator Hardwick put the following question:

"Mr. Palmer, right here, does Germany do that with us now?

"Mr. Palmer: Germany is doing with us exactly what we are doing with her; she is following along. She is making inquiry constantly to find out just how far we are going with German property.

"Senator Hardwick: She will do, of course, whatever we do?

"Mr. Palmer: She will do what we do, exactly.

"Senator Hardwick: And she is now doing just what we are doing?

"Mr. Palmer: She is now doing what we are

doing; and she may take no step in advance of what we do because the balance is against her."

* * * * *

Thereupon the question whether these amendments infringed the Treaty with Prussia and the German Empire again arose. Senator Knox read Articles 23 and 24 of the treaty into the record and commented as follows:

"Senator Knox: So it appears so far as the observance of the treaty is concerned and the treatment of American property in Germany, Germany has observed the treaty and is watching us to see whether we do the same."

Mr. Martin subsequently stated: "We do not know whether Germany is observing the treaty or not."

"Mr. Knox: May I inquire of the Senator, he being a member of the Committee, whether Mr. Palmer stated to the Committee, if they could do this, notwithstanding the treaty, or whether they could do it within the lines of the treaty and under the general rules that prevail in war?"

"Mr. Dillingham: In reply to the Senator from Pennsylvania, I will say the treaty was not discussed, a question was asked whether there was a treaty, and a prominent member of the committee assured us there was no treaty with Germany and the matter went without further discussion from that standpoint of the case. * * *

"I have gone this far to call the attention of the Senate to a situation in which it appears we have a treaty with Germany covering this very subject, a treaty to the terms of which Germany has lived up to, as appears from the testimony of Mr. Palmer. Now, then, I do not know what situation the adoption of this legislation will bring our Government into. It looks to me like a serious matter. I am in full sympathy with sentiments expressed by the Senator from Virginia [Mr. Martin], but I think it is all wrong to have these amendments brought in on an appropriation bill and without consideration by any committee

with the treaty before them. I think both these amendments—the one that has already been adopted and the one pending as well—ought to be defeated.”

Near the conclusion of the debate Senator Frelinghuysen proposed and added the following amendment to the amendments, which was also passed, together with the proposed amendments:

SENATOR FRELINGHUYSEN'S AMENDMENT.

“And provided, further, That any property, other than that sold to the United States, sold under this act, shall be sold at public auction to citizens of the United States only and to the highest bidder.”

PAYMENT OF TAXES BY CUSTODIAN.

AMENDMENT JULY 1ST, 1918.

This amendment empowered the Alien Property Custodian to pay State and Municipal taxes levied upon property in his hands and the subsequent possession of the United States Government.

The amendment was also carried as a rider by the Sundry Civil Appropriation Bill.

The reason for this amendment will also be found on page 242 of the above report.

PATENTS AND ABSENT STOCK CERTIFICATES.

AMENDMENT OF NOVEMBER 4, 1918.

This was an amendment to Subsection (c) of Section 7 of the “Trading with the Enemy Act,” and was carried as a rider to the Appropriations Act to supply deficiencies for fiscal year ending June 30, 1919.

Mr. Palmer in his Alien Property Custodian Report to Congress (Document No. 435, 66th Congress, Third Ses-

sion, February 22, 1919), says: "The Alien Property Custodian was thereby empowered to demand and take over enemy-owned patents and to require corporations to issue to him new certificates of stock in lieu of certificates which cannot be produced for transfer by reason of their being in the enemy country." The above and other elaborate reasons given by him for various changes in the original act will be found on pages 238 to 240 of the above mentioned document.

AMENDMENT OF JULY 11, 1919.

The only amendment of above date was contained in the "Act to supply deficiencies for fiscal year ending June 30, 1919, and consisted in providing that suit in certain cases could be instituted in the Supreme Court, District of Columbia.

(*Congressional Record*, June 3d, 1920.)

HOUSE OF REPRESENTATIVES.

Amendments to Trading with Enemy Act, Reported from the Committee on Interstate and Foreign Commerce, Known as H. R. 14,208.

PROCEEDINGS UPON THE FLOOR OF THE HOUSE.

The rules were suspended on motion of Representative Winslow of Massachusetts (Mr. Esch being absent) to pass the amendments.

Debate very short—no lengthy speeches made.

Mr. Saunders of Indiana, in reply to Mr. Blauton (who had objected to the amendments "if they gave the right to pay claims prior to October, 1917," due to debtors in preference to claims of citizens having such arising from

losses caused by "*Lusitania*" destruction and other German depredations against Americans), answered:

"Does the gentleman really think that the Department of State and the Department of Justice, each would be urgently requesting that we would pass this legislation, if it would work the injustice that he seems to think it would?"

Upon Mr. Blauton's criticism that those Departments were principally composed of subordinates, Mr. Saunders stated that the communications were signed by A. Mitchell Palmer, Attorney General, and Bainbridge Colby, Secretary of State, and subsequently the Alien Property Custodian. Francis P. Garvan had also signed such a communication.

Mr. Montague added: "This bill was thoroughly considered by the Committee on Interstate and Foreign Commerce."

Just before voting Mr. Sims, of Tennessee, said: "The law was never passed as a confiscation act, but it was passed to take care of and preserve the property of the parties entitled to it."

On motion of Mr. Esch, who meanwhile had come in, the bill was passed by a two-thirds vote.

PROCEEDINGS IN THE SENATE ON H. R. 14,208, JUNE 4, 1920.

The bill was read twice by title and referred to Committee on the Judiciary, who at once reported the same favorably and on this report it was passed.

DEBATE IN SENATE.

(*Congressional Record, January 29, 1921.*)

AMENDMENT KNOWN AS SENATE BILL 4897.

To amend the Trading with Enemy Act by including in Section 9: A woman born of American parents and living abroad with her alien husband.

PROPERTY SHOULD BE RETURNED TO INDIVIDUAL OWNERS.

Mr. Smith of Georgia: Mr. President, I do not regard the return of alien enemy property to its owners as a matter of politics, and it should not be considered from the standpoint of pleasing the people of any State. I regard it as a matter of duty which rests upon our Government.

When a nation invites foreigners to invest their money within its borders, the nation then becomes in a sense trustee for the property, and the obligation rests upon the nation to protect that property. While in the case of war the property can be sequestered for the purpose of guarding against its use by the enemy, yet at the close of the war the obligation rests upon the nation sequestering the property to return it to its owners.

The property in the hands of the Alien Property Custodian belonged, at the time it was sequestered, to certain individuals, and we have no right as a nation to deprive them of it or to divert it to some other use. It still belongs to those who owned it at the time it was seized by the Alien Property Custodian, and the obligation rests upon our Government, as a matter of good faith, to return it to them. No matter how meritorious may be the claims against the German Government, to use the property of a few individuals because they were Germans, to pay a liability of the German Government, when that

property was invested in our country with the consent of our Government would be a breach of good faith.

This principle was announced in an early treaty made with Prussia, prepared, I believe, by Mr. Franklin. It was presented to the Prussian Government by Benjamin Franklin, John Adams and Thomas Jefferson. It was reasserted in the treaty of 1824 with Prussia, and this last treaty has been treated by the German Government and our Government as extending to the entire German Empire. It amounts to a treaty obligation to these Germans, whose property is now in the hands of the Alien Property Custodian, to return to them as individuals their property at the close of the war.

Our Government has led the nations of the world in seeking to mitigate the horrors of war by preserving to the individual his property against the devastation of war. We have led the world in teaching it. We have gone even further and we have insisted that property of private citizens upon the ocean should be safe from enemy confiscation.

* * * * *

GOVERNMENTS ALONE ARE RESPONSIBLE—NOT INDIVIDUALS.

Mr. Underwood: Will the Senator allow me to ask him a question?

Mr. Smith of Georgia: Certainly.

Mr. Underwood: I recognize that the Senator is presenting a humanitarian and a charitable view and I am not one of those who want to crush the man who is down, but I believe first in justice to our own people. How are the American citizens whose property was destroyed by a ruthless German Government during the war to get a settlement of their claims if we are to turn this property back to the German citizens?

Mr. Smith of Georgia: That is a pertinent question.

Our citizens should receive justice from the German Government, but the liability is by the German Government to them, and this liability of the German Government would not excuse the United States from doing injustice to a few German citizens. In our treaty with Germany we should demand and require, right alongside of any other indemnity, compensation to our own citizens from the German Government.

Mr. Underwood: How are they to get it? We cannot get Germany to pay for the keep of the American soldiers on the Rhine, who are there under an armistice agreement as a first charge against the nation.

Mr. Smith of Georgia: We ought to have taken care of our rights in this respect in the treaty, and we still ought to do so.

Mr. Underwood: If we had ratified the treaty of Versailles, it would have been taken care of.

* * * * *

Mr. Smith of Georgia: I do not think the German Government has the right to give away the property of its citizens here.

Mr. Underwood: I think the Senator will find that that is a new announcement of international law. That a government cannot control the rights of its own nationals is a new announcement of international law, which I have not heretofore heard advanced.

Mr. Smith of Georgia: I do not think we could make an agreement with the German Government to subject the property of individuals to a liability for which the German Government is responsible without being guilty of a breach of trust on our own part. When we open our doors for investments by foreign citizens in time of peace, they confide their property to the faith of our Government and laws, and it would be a breach of good faith by our Government to confiscate their property on ac-

count of controversies between the two nations, and it would be a violation of trust reposed in us to divert the property from its owners.

The proper way to protect our citizens is to require reparation from all of Germany to meet their losses, and not to simply take the property of a few Germans to meet the responsibility of their Government. The owners of this property trusted this property to us, and invested their money in the United States under our laws, having faith in us as a Nation to protect them in their property rights, and having faith in the treaty which we had made with Germany, by which we had agreed to protect them in their property rights even in case of war. They had a right to believe we would live up to the obligation.

I agree with the view presented by Mr. Hamilton in his celebrated Camillus letter supporting the Jay treaty with Great Britain. The German citizens, whose property is now in the hands of the Alien Property Custodian, have a right to expect us sacredly to protect the trust confided in us. Not only under the treaty with Prussia, which has been extended by our Government and the Government of Germany to all of Germany, but under established rules of international law not disregarded during the past 100 years, the property of an alien enemy upon land cannot be confiscated, and for it to be taken to be used for any purpose except to return it to its owners would be confiscation.

The bill was reported to the Senate without amendment, ordered to be engrossed for a third reading, read the third time, and passed.

HAS SENATOR UNDERWOOD FORGOTTEN THE ADOLPH PAVENSTEDT CASE SO SOON?

Senator Underwood's remarks as reported in the Congressional Record of January 31st, 1921, when discussing

the Knox Senate bill No. 4897, which sought to exclude from the enemy classification a woman born of American parents and living abroad with her alien enemy husband during the war period, has been a matter of some surprise and chagrin to those who had followed his words and actions in other recent cases of similar import. Especially in regard to the amendment of June 5th, 1920. This latter bill, as is well known, in addition to other features restored in full all the property of those internees guilty of seditious speech or acts against this country during the late war. Some of these people had been made notorious by their alleged acts in contributing either in services or cash toward the alleged plots to blow up bridges, factories, arsenals and other public buildings and endangering human life generally—and when the bill for their relief was before the Congress and found a supporter in such a valiant defender of General Palmer as Senator Underwood it was generally accepted as evidence that he had followed that dauntless warrior's opinion as expressed in a recent newspaper interview and had finally concluded that the war was over. It was therefore with some degree of surprise and considerable shock that we read his words in Congressional Record of the above date, as follows:

SETTLED AT VERSAILLES.

Senator Underwood: The matter has been worked out and settled in the Treaty of Versailles. You may say that we are not a party to the treaty, and we are not, and probably never will be now. Nevertheless, the title to this property comes from Germany, and under her agreement in the Treaty of Versailles it is settled on the basis that it shall be used to pay our citizens for property lost and destroyed by German action, and in the event that it

is not all used up for that purpose it shall go as a reparation claim to England and France.

That is the German agreement, and if we surrender our rights I think that we will find ourselves facing the claim of the English and French that they have rights in this matter, and that we are surrendering title to property to pay the nationals of some other nation.

I do not think the time has come when out of a desire to please some of our American citizens who have relatives in Germany or out of a matter of politics we should start now to surrender the rights of our own citizens.

ADOLPH PAVENSTEDT CASE.

Mr. Adolph Pavenstedt, an alien enemy, was arrested and interned at the instance of Mr. Palmer when Alien Property Custodian. He was described by him at that time as a dangerous alien enemy and connected with the German Spy System in America.

Great notoriety obtained in this case and the arrest was widely heralded as a master stroke by the Alien Property Custodian's Office.

Mr. Pavenstedt was interned at the Internment Camp at Ogelthorpe, Georgia, and his property valued in cash at \$1,800,000 and real estate and other property at about \$200,000 was seized and later his cash was turned into the United States Treasury.

On February 12th, 1920, there was filed in the Supreme Court, District of Columbia, the case of "Adolph Pavenstedt, plaintiff, against Francis P. Garvan, as Alien Property Custodian, and John Burke, as Treasurer of the United States." It was a suit in equity, No. 37,569, and asked for the return of the property. The attorney for Mr. Pavenstedt was Oscar W. Underwood, Junior.

On June 10th, 1920, Mr. Justice Bailey of the above

court dismissed the bill of complaint and from the papers in the case it appears that at this time Mr. J. Harry Covington, who was then acting as A. Mitchell Palmer's campaign treasurer, was connected as one of counsel for the plaintiff, Mr. Pavenstedt.

Just prior to this, however, to wit, May 28th, 1920, in the examination *in re* presidential expenditures being conducted by Sub-committee of the Senate, it appears from the records (see page 330 of "Presidential Campaign Expenses") Mr. Covington testified and said that he was the attorney, together with Mr. Oscar W. Underwood, Junior, for Mr. Adolph Pavenstedt, seeking the return of his property in a case at that time before the Supreme Court, District of Columbia.

In speaking of Mr. Pavenstedt he said that Mr. Pavenstedt had really done nothing, or, as he put it, "He happened to be a very wealthy man and without having done anything, as I think," and then proceeded to tell the Committee why and how he got into the case as one of the attorneys.

On May 25th, 1920, on a hearing *in re* H. R. 14208, conducted by the Committee on Interstate and Foreign Commerce of the House of Representatives, Mr. Lucien H. Boggs, Special Assistant to the Attorney-General, stated in response to an inquiry as to the approximate amount of money to be returned under the terms of the proposed legislation, said:

Mr. Boggs: It will be noted from the list which is furnished the Committee that for the most part the holdings of these interests that are now in the hands of the Alien Property Custodian consist of very small amounts of money. Merely as an illustration I will read a few from the list: H. Mayer, \$70.17; Hermann G. Kulenkampff, \$49; and E. Lutz, \$64.82.

The Chairman: Yet, if there are only 100 individuals involved the average would be \$43,000?

Mr. Boggs: Yes, sir. There is one very large amount which is involved in litigation at the present time.

This very large amount above quoted by Mr. Boggs was the Adolph Pavenstedt claim.

The bill above mentioned (H. R. 14208) was passed by both Houses, signed by the President, on June 5th, 1920, and thus became law. During its passage in the Senate on June 4th, 1920, the following colloquy arose on the floor of the Senate between Senators Nelson, Curtis and Underwood:

* * * * *

Mr. Curtis: Those are the substantial provisions of the bill.

Mr. Underwood: Mr. President—

Mr. Nelson: I yield to the Senator from Alabama.

SENATOR UNDERWOOD ASKS WHO IS TO BENEFIT.

Mr. Underwood: I have no doubt the Senator has made the statement clearly, but I did not entirely grasp it, in reference to the German alien who was living in this country at the time of the declaration of war, and remained in this country during the war, but was interned by order of the President, and his property was taken. This bill authorizes that man's property to be returned to him; does it?

Mr. Nelson: If he is living in this country it does; but not if he leaves this country. It applies only to those who continue to live here and are living here at the time of the application.

* * * * *

Evidently the answer of Senator Nelson satisfied Mr. Underwood as the vote recorded was unanimous.

Mr. Pavenstedt was one of the first to receive back his

money and property under this amendment to the Statute. It is rumored his lawyers were recipients of \$200,000 in fees.

This bill restored millions of dollars then reposing in the Treasury of the United States to alien enemies, even though they had been publicly charged with attempts on the lives of citizens and concocting schemes to destroy American property, while Pavenstedt was charged with having been the accredited paymaster of the German Spy System in the United States. They had all been arrested and interned as alien enemies by his friend Mr. Palmer.

Mr. Underwood has not hesitated to denounce attorneys who had cases involving the return of German property as "Pro-German," on the floor of the Senate, where they could not defend themselves. Surely Senator Underwood does not want us to think that he is playing a favorite in thus denouncing his fellow attorneys who appear as counsel for German or American citizens who have or believe they have a just grievance. Such a thought concerning a United States Senator is beyond belief and repugnant to our idea of government and violation of every conception of American fair play.

MR. PALMER'S IDEAS AND CONSTRUCTION OF THE LAW.

Hearing Before Sub. Com. Judiciary, U. S. Senate, 66 Congress, June 4, 1919, on Nomination of A. Mitchell Palmer for Attorney-General.

Hearing of June 20, 1919.

Page 99:

TESTIMONY OF A. MITCHELL PALMER.

"I sat as a court of equity to determine the facts and law in the matter of 35,000 cases in little over a year. I

have no doubt that we made mistakes. * * * The Government may have been given some preference." * * *

Speaking of his action further he says: "Certainly no harm to American citizens. * * *

"But enemies have been injured by it."

* * * * *

Further on the same page he says that Germany had protested his action through the State Department "because, as Germany said,

"His conduct is evidently designed to destroy the German economic existence upon this continent," and then he added:

"And they had it right."

Page 100:

* * * * *

"Gentlemen, I want to say to you, that I take such pride in what I consider the splendid work of that loyal American organization in our country's great emergency, that I would be delighted to have the country know how we destroyed the enemy in our midst."

* * * * *

Page 112:

Palmer, when taking up Lewis's charges of wrong doing, referring to sale of Bosch Magneto Co.:

"The armistice had no effect as a matter of law and ought not to as a matter of fact."

* * * * *

Page 126:

Referring to the Bosch Magneto Co., which was sold on December 7, 1918, long after the armistice, Mr. Palmer said:

"So I sold this property while the war was on * * *

with an idea in the back of my head * * * that we should use this power to strike a blow at the Germans."

"A matter of a good market"

"And Mr. Lewis said the other day somebody must have made a lot of money out of this thing * * * because he said the stock went up immediately, and whereas it was put on the market in January at 65, by Summer time, in June, it had reached 104. But I did know what the condition of the automobile business was at that time—and this business is closely akin to the automobile business."

Page 126:

Speaking of the Bosch Magneto sale he says:

"It may be that Mr. Lewis will say that we ought to have waited for a better market. At that time the automobile business was on the flat of its back, when automobile manufacturers were not being allowed to build automobiles, either pleasure cars or trucks, when automobile manufacturers from one end of the country to the other were wondering what was going to happen to them, that is, the market, that this sale went into."

* * * * *

"I was not going to hunt for the best moment to sell the German property for America * * * but I was not going to hunt around to find the best time to place millions in the United States Treasury for these Germans to hire lawyers in America to come and fight for after the war was over."

* * * * *

Page 126:

"And I am perfectly frank to say, as far as I am concerned, I am glad that some American citizens made some money out of this property."

Page 127:

“And I hope to God they all make money out of it, before they get through with it.”

Hearing, July 24, 1919.

Page 132:

Senator Frelinghuysen: “Several of my constituents, all Americans, and many others in other States, had complained to me continually of the injustice of the administration of the Alien Property Custodian’s office, and Mr. Palmer’s interpretation of the law and his administration. There had come under my observation the sale of several properties which, I believe, had been sold at extreme sacrifice.”

Page 187:

“I have publicly stated, before Senate committees, before the people, and in addresses to bar associations and others, declared it to be the policy of the Government, as shown by the amendment of March 28, 1918, to the trading-with-the-enemy act, to capture and destroy the German industrial army on American soil.”

Page 189:

“I assumed that Congress gave me that power in order that I might exercise it, and I have exercised it throughout my entire administration of the office of Alien Property Custodian.”

Page 104:

As to Heins:

"We sent for Heins, brought him to our office in New York. * * * We subjected him to a rigid examination. * * * We had made up our minds * * * that even his ownership of it (the stock) was a menace to the Country," etc.

*From "Statement" of Alien Property Custodian as to the
"Administration of Alien Property," 1919.*

Referring to the report of J. E. MacCloskey, Jr., of Pittsburg, as to the seizure and conduct of sale of the Orenstein-Arthur Koppel Co., the first to be sold by the Custodian:

Page 92:

ADVICE OF LEARNED COUNSEL IGNORED.

"Mr. MacCloskey: The legal problems that confronted us at the beginning were many, especially in this case.

"At first it was considered advisable to file a bill in equity, under the Trading-with-the-enemy act, so as to be sure that we would have the sanction of the Court in our procedure.

"I drafted an elaborate bill in equity, but it was decided that the Alien Property Custodian would not seek the aid of the Court in making sales."

Mr. J. E. MacCloskey, Jr., is an able Pittsburg attorney who was employed by Custodian Palmer to represent him officially in taking over and selling the Orenstein-Arthur Koppel Co. plant, and in which matter he made the above statement.

The purchaser at the Custodian sale was the Pressed-Steel Car Co. of which Mr. Palmer's appointee as representative director, Mr. T. Hart Given, was a director.—Editor.

NOTE.—Mr. Heins never had nor has been declared an enemy. He had lived here consecutively for twelve years with his wife and family, owning his own home.—Editor.

ALIEN PROPERTY CUSTODIAN NEVER CEASED TO
BE A COMMON LAW TRUSTEE.

REMARKS OF EX-ATTORNEY GENERAL MERTON E. LEWIS
BEFORE THE SUB-COMMITTEE OF THE JUDICIARY COM-
MITTEE OF THE UNITED STATES SENATE.

* * * * *

"The act of Congress known as 'The Trading with the Enemy Act' became a law on October 6, 1917. Section 12 of the Act confers upon the Alien Property Custodian all the powers of a common law trustee in respect of all property other than money, which shall come into his possession in pursuance of this act. This Act was amended by a provision of the urgent deficiencies bill of March 28, 1918, which re-enacted the provisions of Section 12 of The Trading with the Enemy Act on this subject and in addition gave to the Alien Property Custodian power to make any disposition of such property, by sale or otherwise, in like manner as though he were the owner thereof.

"Prior to this amendment the Custodian's power to sell was limited to those cases in which a sale might be regarded as necessary for the prevention of waste and to protect such property and to the end that interests of the United States in such property and rights, or of such persons as may ultimately become entitled thereto, or to the proceeds thereof, may be preserved and safeguarded.

"The language of the amendment does not materially change or enlarge the powers of the Alien Property Custodian over property taken by him into his possession. It does give him the right to sell, for purposes other than the prevention of waste and the preservation of the proceeds of such sale. It gives him this power in addition to, not in violation of the power of a common law trustee. He still remains a common law trustee by the very terms of the amendment of March 28, 1918. An absolute owner of the

Bosch Magneto Co. factory might lawfully tear it down and burn the timbers for firewood. He might smash the machinery with a sledge hammer and tear up his patents or give them away, for any reason or without reason.

"A common law trustee, however, even when vested by statute with all the powers of an absolute owner could not safely do those things without a valid and sufficient reason. He was operating under war legislation. The power conferred upon him could be exercised when, and only when, it was necessary in the performance of his duty. In the event of an invasion by an enemy army, he might lawfully, perhaps, have destroyed the factory and its equipment to prevent its falling into enemy hands.

"There is no doubt that he had the power to sell enemy property under proper conditions, and to give to the purchaser a good and sufficient title. Before doing so it was his duty to be sure that it was enemy property. He should have been sure, too, that some good and sufficient reason for the sale actually existed. As this was an extraordinary power, conferred upon him under extraordinary conditions, he must be able to show that some extraordinary reason existed for its exercise by him. It was sold after the armistice had been signed, after the President had advised Congress that the war had come to an end. With an absolute owner the new condition would have made no difference. An absolute owner would have been under no obligations to anyone, unless perhaps, to his creditors. An absolute owner could have lawfully given the property away, or could have sold it for a nominal consideration. A public officer could do neither. There was a reason for giving him this power, and it was his duty to exercise that power for the consummation of the purpose for which it was given. It was his duty as a common law trustee to make sure that the property be not sold for an inadequate price. He was at the time of the sale of this

property still vested with all the powers of a common law trustee, and if so, subject to all of the duties of such a trustee.”

* * * * *

EXCERPT FROM THE ARGUMENT OF HAROLD REMINGTON, AN ATTORNEY-AT-LAW, AGAINST THE CONFIRMATION AS ATTORNEY-GENERAL OF A. MITCHELL PALMER, JULY 23, 1919.

* * * * *

No matter what else the Alien Property Custodian might have been, or might have assumed to be—investigator with plenary powers of search and seizure, prosecutor, court and business administrator of big business—all in one or any; no matter whether his beneficiaries were the people of the United States, or the former German owners of the property seized, or American citizens or non-alien enemies holding interests therein or liens or claims as creditors against it or other third parties, whose property thus came into his possession, the Alien Property Custodian has been acting and his appointees are continuing to act, towards those beneficiaries and that property, at any rate and at all times, also as trustee, by the express provision of the Act. Nor did the Amendment of March 26th, 1918, by using the words “in like manner as though he were the absolute owner thereof” do more than give discretionary powers to this trustee or perhaps permit his sales to be clear and free of liens, transferring the rights of interested parties to the proceeds of sale, in the usual way of court trustees, as distinguished from common law trustees. But he was all the time mere trustee and he was not vested with absolute ownership and was, like all trustees, all the time subject to the control of the court. No law, whether the hurried “rider” to an appropriation bill, as was this Amendment, or the deliberate and considered Act of the Congress, can shake

off the control of the court from this trustee. It cannot be done. And any law apparently attempting to do so must be construed not to do so, else it will be so far null and void. The original words of the Trading with the Enemy Act stating the purpose of his trust,

“If and when necessary to prevent waste and protect such property and to that end that interests of the United States in such property and rights or of such person as may ultimately become entitled thereto, or to the proceeds thereof, may be preserved and safe-guarded.”

though left out by the amendment, remained and still are in the law, just the same, and they never can be excised from the law. No power can give absolute discretion to this trustee, so long as the Constitution of the United States stands as it now is. All such discretion, despite the words of the amendment “in like manner as though he were absolute owner thereof” are, nevertheless, the discretion of a trustee. Even if the former German owners of property seized are, by the treaty, divested of all residual interest in the property or its proceeds, still the Government of the United States and its people remain as beneficiaries, and as such are tremendously interested in the proper conduct of that former trusteeship.

* * * * * *

The public duties of the Nominee whilst Alien Property Custodian were wholly taken up with the Trading with the Enemy Act. He should have understood that Act from its beginning to its end and have enforced it according to its provisions. Instead, he either has not understood the law or has wilfully perverted and abused it.

The very first thing in it that he should have sought to

understand, the fundamental thing, indeed, was his power and method of acquiring possession of property claimed to be enemy property.

This matter was governed by Section 17 of the Act, which provides:

“That the District Courts of the United States are hereby given jurisdiction to make and enter all such rules as to notice and otherwise, and all such orders and decrees, and to issue such process as may be necessary and proper in the premises to enforce the provisions of the Act, with a right of appeal from the final order or decree of such Court as provided in Sections 128 and 238 of the Act of March 3, 1911, entitled ‘An Act to codify, revise and amend the laws relating to the judiciary.’”

This statute plainly gives to the District Courts of the United States the fullest power to make all rules, issue all processes and enter all orders and all decrees necessary or proper to carry out the law, under which rules and orders could be made for the seizure of property claimed on the one hand and denied on the other to be enemy property, *ex parte* as on warrant of attachment, or otherwise; but at the same time the statute undoubtedly requires in such cases court process and control, which is right, lawful, just and orderly and the only legitimate way to proceed. The notice might be as short, the process as speedy, as the courts might find to be proper; and property might be seized immediately; but all the time, wherever the non-enemy character of such property was in dispute, the statute contemplated court control, that the property seized should be in charge of a court to prevent injustice, curb oppression and give a chance for defense to the one whose property was seized. And that is due process of law. And that is the American way. And that

was the way we did during the Civil War. And it was and is an effective and just way.

JUDICIAL PROCESS IGNORED.

But that way evidently did not suit the Nominee while Alien Property Custodian. He evaded, resisted and flouted the supervision of the courts of the United States in his contests over property whose enemy character was disputed; and he denied the right even of non-enemy claimants to require him to bring such property obtained by him to the court for action; and he procured the delivery of property whose enemy character was in dispute not by orderly court process but by resort to duress, coercion, threats of indictment for failure to comply with his "demands"—non-compliance with which was erected into a separate and distinct offense; and the patient public and the cowed victims endured it all, to "win the war." Not only in probably every one of the 40,000 "trusts" he speaks of as being administered by the Alien Property Custodian, but also in hundreds and thousands of other cases abandoned as ungrounded his subordinates have terrorized by threats of indictment and have played on the natural dread of publicity—all under the assumed protection of the special provisions of Section 7 of the Act exempting them from the consequences of any such proceedings if done under "authority" of the Act! And now the Treaty of Peace provides in effect that the claimants shall be debarred from the courts for remedy against the Custodian!

He claimed in effect absolute unrestrained power—the power himself to make the investigation, himself to make the determination, himself to compel the delivery, himself to control the administration, himself to sell out the property, without bringing the property to any court for condemnation, without giving a chance for the assertion

of any defense before an impartial tribunal, without the slightest supervision or control by any of the duly constituted tribunals of the land. He was above all law and virtually set the courts at naught. Either from the unpardonable desire to exercise this uncontrolled power or through an unpardonable fear of the daylight of our American courts or through an equally unpardonable lack of legal discernment—lack of the ability to read and construe statutes correctly—he took and doubtless still maintains the perverted position that upon his secret investigation and “determination” anybody’s property might be impressed with enemy character, without even bringing it to any court for condemnation, and that the sole remedy of the owners, or possessors, was to make their claims before him under Section 9 of the Act—a section which your Honorable Sub-Committee can see at a glance, and as the Court has determined (see *American Exchange National Bank v. A. Mitchell Palmer*, in S. D. of N. Y., 1919), is taken up with an entirely different subject, the subject of the claims of creditors, or lienors, or third parties claiming ownership, against concededly enemy property after its condemnation or surrender and whilst it, or its proceeds, are still in the hands of the Alien Property Custodian, which stands on entirely different ground from the compulsory delivery and condemnation itself as enemy property. He took the unconscionable position that property must be turned over to himself without court condemnation; the “investigator,” the “determiner” and the party plaintiff (as trustee) and the officer making the seizure, all in one! From this fundamental misconception or perversion of the very law that the nominee ought to have been interested in enforcing nobly as the Congress of the United States meant it to be enforced; from this unwillingness to be controlled by any court in the obtaining possession of property in dispute and in the

disposal of it, have come a large part of the complaints that have arisen against the nominee for his conduct whilst occupying the office of Alien Property Custodian.

TRUSTEE ALWAYS AMENDABLE TO COURTS.

Nor does the Amendatory Act of November 4, 1918, by the addition of the words "or the same may be seized by the Alien Property Custodian," to the first sentence of Paragraph (c) of Section 7, alter the situation one whit; it simply added another officer who could make seizure under Court orders under Section 17 of the Trading with the Enemy Act. That is all it did. That is all it pretends to do, for there is added the words "And all property thus acquired shall be held, administered and disposed of as elsewhere provided in this Act," which means that the holding by this officer shall be like the holding of the marshal or court trustee, as otherwise provided in the Act. This is the most that that Amendment can mean in regard to seizure. It does not mean to cast off court control; and did it so mean it would be void.

It is preposterous that a trustee, making a seizure or otherwise carrying on his office, should be amenable to no court. It is unthinkable in the United States of America. Nor will it do to say that the trustee was accountable to the President of the United States as a Court. The President of the United States, even if such a commingling of judicial and executive functions would be allowable, would not be permitted himself to delegate his judicial functions, nor could any "rider" under an appropriation bill, passed by Congress, give him the power to delegate judicial authority. It would be inherently impossible for him thus to delegate it. But who has heard of any accounting of this trustee to his Excellency the President of the United States? The President has not assumed, in a

single instance so far as the public is aware, to pass upon this trustee's accounts as a Court.

Whenever the enemy character of property about to be seized was denied, whether its delivery was coerced or made under protest, it was the duty of the Alien Property Custodian to have taken the property seized to a court, under Section 17 of the Act, and to have had the Court's judgment of condemnation, with opportunity for all parties to be heard. This fundamental right was denied by the Alien Property Custodian, in all instances, and the Nominee undoubtedly will reaffirm his denial, if asked, although the present incumbent of that office is understood to be proceeding in recent cases by libel of information in the correct way.

* * * * *

CONFISCATION OR DESTRUCTION NEVER FUNCTION OF A TRUSTEE.

The Alien Property Custodian is not a warrior; his duties are not to destroy, not to destroy anything. He is a custodian, a conservator, a trustee, preserving and holding for the benefit of everybody interested. The disposition of the property under his trusts was to be left to other branches of the Government. Especially was it no part of his duties to destroy German industries after the war was ended.

The reason for the creation of the office was to keep property from aiding the enemy to wage war on us, not to deprive anyone of its ownership. And to do so he was to conserve it, protect its value, disturb its management and control as little as possible consistent with that object. It never was his function to destroy ownership, nor to sacrifice values, nor to sell it unless it was necessary in order to preserve its value as perishable, as is usual in

common law trusts; much less was it his function to sell it to raise money to carry on the war.

As the Court said in the case of the American Exchange National Bank *v.* A. Mitchell Palmer:

“It is suggested in the brief submitted on behalf of the Custodian that ‘the Trading with the Enemy Act is not only to weaken the arm of the enemy by depriving him of resources, but also to strengthen the arm of the captor by furnishing means for the prosecution of the war.’ Nowhere in the Act is there evidence of any legislative intent that the purpose of seizure or taking enemy property under the Act is to furnish our Government with means to prosecute the war. The final disposition of such property as has been or will be taken under the Act, will be governed by treaty arrangements or Congressional legislation or both. In a broad sense, the United States is a trustee to hold enemy property taken under the Act, until such time as the United States, in orderly course, shall determine the final disposition thereof.”

I do not believe any Senator who is a lawyer will be found to support this Nominee’s declaration that it was his function to destroy anyone’s property or ownership.

The United States does not make war on non-combatants who are in no way aiding the enemy to make war on us. We went to war largely to denounce and condemn for all time such doctrine. However permissible it might be for a private citizen to say it, a public officer, candidate for the highest law position in the gift of the Government, should not express such principle.

Even the drastic treaty of peace carefully observes the line of demarcation.

Nor would we like to have the principle implanted in

international law that the existence of a state of war will justify the confiscation and sale of inoffensive non-combatants private property and confer good title on the purchaser thereof, else the time may come in Mexico and elsewhere where vast American interests are involved that international law will say that good title was conferred on the purchaser of inoffensive American property, because the mere existence of a state of war justifies the seizing and sale of non-combatant property, no matter what eventually might be the outcome of the war itself!

* * * * *

DISCUSSION ON THE PROPOSED VERSAILLES TREATY ON THE FLOOR OF THE SENATE, OCTOBER 18, 1917.

DEMOCRATIC LEADER HITCHCOCK'S WAR RECORD OF NEUTRALITY.

Senator Poindexter charged on the floor of the Senate October 18th, 1919, that Senator Hitchcock had introduced on December 7th, 1914, a resolution in the Senate known as Resolution No. 488, directing the Secretary of Commerce to inform the Senate "if arms and ammunition were being exported from the United States, the quality and what contracts were in existence for such exports." The same day the Senator charged that Senator Hitchcock introduced Senate bill No. 6688, forbidding the sale and delivery of arms and ammunition to any nation with which America was at peace.

The Senator further charged that Senator Hitchcock proposed this same matter as an amendment to a bill pending in the Senate. And further stated that on December 7th, 1915, seven months after the sinking of the *Lusitania*, Senator Hitchcock had introduced Senate bill 380 prohibiting the sale and export of arms and ammu-

nition to any nation with which the United States was at peace. The Senator further charged that Senator Hitchcock between these dates was very active in engaging these measures and resolutions. He also quoted Senator Hitchcock's speeches as contained in the Congressional Record February, 1915, Volume 52, pages 38 and 39, wherein Senator Hitchcock had declared England had obtained possession of the seas and was in a position to buy munitions of war from us, thereby giving her a great advantage and that we should withdraw that advantage by prohibiting the sale of these supplies to her and that the United States should lead the neutral countries of the world in aggressive steps to bring the war to a close. Replying, Senator Hitchcock said: "When I introduced the embargo resolution on December 7th, 1914, the first day of the first session of Congress after the beginning of the war, it expressed no sympathy for either side, only a declaration of this country's purpose to remain absolutely neutral. At that time, it must be remembered, it was the universal desire of this country that we should maintain our neutrality * * * the only interests that opposed the policy I suggested were the manufacturers who were making great fortunes from the production of the munitions. * * * I later offered it as an amendment to the shipping bill."* The same charges were hurled at Senator Hitchcock by Senator Reed on the floor of the Senate October 14, 1919, and Senator Hitchcock again acknowledged the facts but tried to soften the force of it by stating that the last introduction after the Lusitania incident was a "reintroduction."

Senator Sherman on the floor of the Senate on

*NOTE.—At the periods above mentioned, when Hitchcock was active concerning the above matters, he was the administration leader in the Senate.

charged that Senator Hitchcock had tried to place an embargo (before we were in the war) on shipments to the nations of the Entente. The Senator in discussing Senator Hitchcock's attitude at that time said the following words:

"On January 27, 1916, the senior Senator from Nebraska [Mr. Hitchcock] supported an embargo on the export of arms and ammunition. It was known that Germany had accumulated immense stores of war munitions * * * his chief had not begun to hear voices in the air nor the Senator himself to demand the last pound of German flesh to be removed by us and given to others."

Later on, during the same discussion, when Senator poindexter continued to twit Senator Hitchcock about their introduction and charged the resolutions referred to came from the administration, Hitchcock exclaimed: "That is true, it did come from the President."

ADDENDUM.

BILL GIVES BACK ALIEN PROPERTY SEIZED IN WAR
SENATOR KING CONTENTS FOREIGN HOLDINGS WERE NOT CONFISCATED, BUT MERELY SEQUESTERED BY THE U. S.

CLAIMS BOARD SUGGESTED.

INDIVIDUALS NOT RESPONSIBLE FOR ACTS OF GERMAN GOVERNMENT, HE DECLARES.

From the Tribune's Washington Bureau.

WASHINGTON, Feb. 15—Senator King, of Utah, Democrat, introduced in the Senate to-day a bill to return to German and Austrian nationals the property which was seized under the trading with the enemy act. Senator King gave out a statement saying he supported the proposition that the alien property seized by the Alien Property Custodian should be returned. He added that it was apparent the Versaille Treaty in its present form would not be ratified, but whether ratified or not the property seized from German and Austrian nationals should be restored to them.

"The Versailles Treaty," said Senator King, "imposed the obligation upon the German government to compensate its nationals for the property which had been seized under the act of Congress. I believe that there was no intention, when Congress passed the trading with the enemy act to deprive alien enemies of title to their property. It was not a confiscatory act. I believe it was the thought of Congress that the property should be held or sequestered until the termination of the war and that ultimately it would be returned to those from whom it had been taken.

POWER VESTED IN CONGRESS.

"The entire matter of disposing of the seized property rests with Congress. I am in favor of enacting an appropriate law under which transfer of the sequestered property may be effectuated.

"It is clear that commission possessing judicial powers must be created and authorized to pass upon the claims which would be filed for the return of the property now held by the Alien Property Custodian. Undoubtedly there would be such conflicting claims that the United States would be compelled for its own protection to dispose of claims before the return of the property to those who may be adjudged to be legally entitled thereto.

"The United States for many years has welcomed aliens to our shores and has invited peoples of other lands to make investments in our country. Billions of dollars of foreign capital has been invested in the United States. Railroads have been built, smelters erected and factories and plants constructed, with capital supplied by persons who did not live under our flag and were not citizens of our country. We welcomed German capital to America, and it was employed in the development of our industries and contributed to our national prosperity.

"At the time of the outbreak of hostilities between the United States and Germany there were hundreds of millions of dollars of German capital invested in the United States. Under the 'trading with the enemy' act this property was seized. This property belongs to many thousands of people residing in Germany. Some of this property has been sold and the proceeds used for the purchase of Liberty bonds, but either the property or the proceeds derived from its sale is in the hands of the Alien Property Custodian. It has not been confiscated or destroyed. It has been preserved during the war.

HOLDS INDIVIDUALS IMMUNE.

"We are now confronted with the question as to whether we shall retain the property or return it to its owners. It is stated by some that Americans have been wronged by Germany, that American ships have been sunk upon the high seas and that Americans have lost their lives from wanton submarine attacks. All this is true, and Germany should be made to pay for these injuries and wrongs. But wrongs of the German government do not, in my opinion, warrant the confiscation of the private property of German nationals. It would be 'unjust and impolitic' and would contravene those higher conceptions of international morality and international duty which should obtain among nations in this enlightened age.

"The government of the United States from the beginning has declared confiscation and sequestration to be impolitic and unwise and has sought to obtain the acceptance of that view of all civilized nations."

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